

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

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Case No. 34-2009-63714

JOAN BOICE, by and through her Successor-in-)
Interest, ERIC BOICE, and MYRON BOICE, ERIC)
BOICE, NANCEE BOICE, and MARK BOICE,)
individually,)
)
Plaintiffs,)
)
v.)
)
EMERITUS CORPORATION, EMERITUS SENIOR LIVING AT)
EMERALD HILLS, RHONDA CASTLEBERG, et al.,)
)
Defendants.)
-----)

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Videotaped Deposition of
DANIEL RAY BATY, CHAIRPERSON

Tuesday, October 30th, 2012

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Reported by CHERYL L. KYLE, CSR No. 7014

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20 The Deponent:

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In Attendance:

Mark Finkelstein, General Counsel of Emeritus

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<u>EXHIBIT</u>	<u>PAGE</u>	<u>DESCRIPTION</u>
453	06	5-page Notice of Oral and Videotaped Deposition of Daniel Baty and Request for Production of Documents.
454	06	12-page Defendant's Objections to Notice of Oral and Videotaped Deposition of Daniel Baty, Chairman of the Board and RFP.
455	06	2-page Minute Order dated 10/17/12.
456	06	2-page Stipulation and Order Re Appointment of Discover Referee.
457	06	10-page Emeritus Corporation Q4 2007 Earnings Call Transcript.
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461	06	6-page 10/14/07 e-mail from Ms. Cordova.
462	15	4-page 3/19/12 Notice of Annual meeting of Shareholders to be held May 9, 2012, pages 35-37
463	23	4-page 3/19/12 Notice of Annual meeting of Shareholders to be held May 9, 2012, pages 37-39.
464	31	2-page Emeritus Senior Living 10/16/12 news release.

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1 BE IT REMEMBERED that, pursuant to Notice, and
2 on Tuesday, the 30th day of October, 2012, commencing
3 at the hour of 8:29 a.m. thereof, at Riddell Williams,
4 1001 Fourth Avenue, Suite 4500, Seattle, Washington,
5 before me, CHERYL L. KYLE, a Certified Shorthand
6 Reporter in and for the County of Sacramento, State of
7 California, there personally appeared

8

9 **DANIEL RAY BATY,**

10

11 called as a witness herein, who, being by me first duly
12 sworn, was thereupon examined and interrogated as
13 hereinafter set forth.

14

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15

(Plaintiffs' Exhibits 453
through 461 were marked
for identification.)

16

17 THE VIDEOGRAPHER: We are on the record at
18 8:29 a.m. The date is October 30th, 2012. Good
19 morning, my name is Erik Urias, and I'll be videotaping
20 this proceeding. I'm employed by Ronk and Company
21 located at 2600 X Street in Sacramento, California.
22 95818. We are located at 1001 Fourth Avenue in
23 Seattle, Washington. We are here in the matter of
24 Boice versus Emeritus, et al. This is the deposition
25 of Dan Baty. The attorney noticing the deposition is

1 Lesley Clement representing the plaintiff. The court
2 reporter is Cheryl Kyle of Scribe Reporting.

3 Would all counsel please identify themselves,
4 the firm they are with, and who they represent.

5 MS. CLEMENT: Lesley Clement for the plaintiffs.

6 MR. REID: Bryan Reid for the defendant.

7 MR. SMITH: Scott Smith of Riddell Williams
8 representing Mr. Baty.

9 MS. BADAWIYA: Rima Badawiya; Lewis, Brisbois,
10 Bisgaard and Smith for defendants.

11 MR. FINKELSTEIN: Mark Finkelstein, general
12 counsel of Emeritus.

13 THE VIDEOGRAPHER: The court reporter may swear
14 in the witness.

15 THE REPORTER: Please raise your right hand to
16 be sworn. Do you solemnly swear or affirm that the
17 testimony you are about to give in these proceedings
18 will be the truth, the whole truth, and nothing but the
19 truth?

20 THE WITNESS: I do.

21 EXAMINATION BY MS. CLEMENT

22 Q. Good morning, Mr. Baty.

23 Could you please state your full name and
24 address for the record?

25 A. Daniel Ray Baty, 1145 Harbor Avenue East,

1 Seattle, Washington 98102.

2 Q. Mr. Baty, have you ever had your deposition
3 taken before?

4 A. Yes.

5 Q. On how many occasions?

6 A. Just one I can think of.

7 Q. What was the nature of that litigation?

8 A. I was with a public company that was the target
9 of a takeover. So in the course of that process, they
10 took depositions for a number of the employees.

11 Q. What was the name of that company?

12 A. I beg your pardon?

13 Q. The name of that company?

14 A. Hillhaven.

15 Q. And Hillhaven, that was a skilled nursing
16 facility chain that you were one of the founders of
17 that?

18 A. No.

19 Q. And what was your relationship to Hillhaven?

20 A. I was the president and CEO.

21 Q. And you understand --

22 MS. CLEMENT: Oh, we've entered into a
23 stipulation off the record -- we need to put this on
24 the record -- that the rules of civil procedure and
25 evidence related to deposition taking in California

1 will apply to this deposition, and the court reporter
2 is authorized to swear in the witness.

3 MR. SMITH: That's fine.

4 MR. REID: Stipulated.

5 Q. BY MS. CLEMENT: Your testimony today, Mr. Baty,
6 is being taken by our court reporter who is going to be
7 taking down everything that you say, and everything
8 that I say, and everything everyone else in the room
9 says. She's only going to be able to do that if we
10 give each other the courtesy of speaking without
11 interruption. And it's very difficult, it's very
12 difficult for lawyers to do that particularly. They
13 have a hard time not speaking over each other, and I
14 will do my very best not to speak over you and allow
15 you to finish and also to allow your attorneys to make
16 objections when they feel that they need to.

17 We also have Judge Cecil here today who has been
18 asked to by the parties -- the court order that we've
19 marked as Exhibit 456 authorizing him to rule upon
20 objections during the course of the deposition.

21 Do you have any questions of me?

22 A. No.

23 Q. Your testimony today is being given under what's
24 called penalty of perjury. And what that means in
25 California, there's rules related to perjury, two to

1 four years in jail for lying under oath. So it's very
2 important that you tell the truth. It's very important
3 that you understand my question. If you don't
4 understand a question, please let me know, and I'll
5 re-ask the question until we get someplace that you do
6 understand the question, okay?

7 A. Yes.

8 Q. Great. In a short time, the court reporter will
9 have a transcript of your deposition, and it will be
10 question, answer, question, answer, and in between
11 there will be objections by the lawyers. You have the
12 opportunity at that time to modify or change an answer.
13 You can't change the questions, but you can change the
14 answers. You should know that to do so may affect your
15 credibility or veracity. Do you understand that?

16 A. Yes.

17 Q. Okay, good. All right.

18 Can you tell me where you're currently employed?

19 A. I'm employed at Emeritus.

20 Q. And what is your job title?

21 A. I am chairman of the board.

22 Q. And how long have you been chairman of the
23 board?

24 A. Probably 15 years, 17 years -- since inception.

25 Q. And did Emeritus form as a corporation in 1993?

1 A. I don't know that specifically, but.

2 Q. Does that sound about right?

3 A. About right.

4 Q. And did Emeritus begin with a single assisted
5 living facility in the State of Washington?

6 A. Yes.

7 Q. And today how many facilities is Emeritus
8 operating?

9 A. It owns or manages, I think, approximately 450.

10 Q. And of the 450 -- approximate 450 facilities
11 that Emeritus owns or manages, are those primarily
12 assisted living facilities?

13 A. Yes.

14 MR. REID: Could you do me a favor and keep your
15 voice up just a little bit more so folks down there can
16 hear you?

17 THE WITNESS: Okay.

18 MR. REID: Thank you.

19 Q. BY MS. CLEMENT: In addition to assisted living
20 facilities, has Emeritus recently gone into the skilled
21 nursing facility market and acquired some of those
22 facilities, as well?

23 A. I don't think we've acquired any standalone
24 nursing homes. I think they're part of a continuing
25 care complex.

1 Q. So was that with the Sunwest acquisition that
2 Emeritus acquired some skilled nursing facilities?
3 A. I think it was primarily from the lease of
4 buildings from Healthcare Properties.
5 Q. And Healthcare Properties, is that a REIT?
6 A. Yes.
7 Q. And can you explain for us what a "REIT" is?
8 A. A REIT is real estate owning company that leases
9 properties or finances properties for operators.
10 Q. When did you cease to become the CEO of
11 Emeritus?
12 A. Roughly two-and-a-half years ago, and that was
13 co-CEO.
14 Q. And approximately two-and-a-half years ago, you
15 quit being the co-CEO with Granger Cobb; is that
16 correct?
17 A. Yes.
18 Q. And Mr. Cobb came on board as a co-CEO with the
19 acquisition or merger of Emeritus and the Summerville
20 facilities?
21 A. Yes.
22 Q. And that merger between Emeritus and Summerville
23 began in 2007 and was completed in September of 2007?
24 A. Yes.
25 Q. And with that merger in 2007, did Emeritus

1 basically double in its capacity to take in elderly
2 residents?

3 A. I don't think double was appropriate.

4 Q. How -- how much more? What figure would be
5 appropriate?

6 A. I don't know the exact numbers.

7 Q. Okay. Can you give me your best estimate of how
8 much bigger Emeritus got when it merged with
9 Summerville in 2007?

10 MR. REID: The question is vague, may lack
11 foundation.

12 THE WITNESS: I -- I just can't within a few
13 percentage points. I just don't remember the numbers.

14 Q. BY MS. CLEMENT: Did you tell investors on
15 earnings calls that Emeritus doubled in size once the
16 Summerville merger took place?

17 A. I don't recall.

18 Q. What's an earnings call?

19 A. Once a quarter, public companies publish their
20 financial results for the quarter. And part of that
21 process is to invite investors to get on a conference
22 call, and the management of the company goes through
23 the publicly-reported numbers.

24 Q. And are the investors on the earnings call that
25 you participated with on behalf of Emeritus, are those

1 the large investors?

2 A. It could be any investor.

3 Q. Is it typically the large investors?

4 MR. REID: That's vague and overbroad, and lacks

5 foundation.

6 THE WITNESS: I'd say there's a mix of large and

7 small.

8 Q. BY MS. CLEMENT: Do you ever have single

9 shareholders on those earnings calls?

10 A. Yes.

11 MR. REID: It's overbroad and lacks foundation.

12 THE WITNESS: Yes. Excuse me, by "single" do

13 you mean individual?

14 Q. BY MS. CLEMENT: No, I mean like someone who just

15 owns a single share of Emeritus.

16 A. I don't -- there's no way we know how many

17 shares they own if they're not a larger shareholder.

18 Q. Is it true that you and your sons and your B&P

19 Partnership are the largest shareholders of Emeritus?

20 A. No.

21 MR. REID: It's compound and vague.

22 THE WITNESS: No.

23 Q. BY MS. CLEMENT: To your understanding, who is

24 the largest shareholder of Emeritus?

25 MR. REID: It's vague as to time.

1 Currently?

2 MS. CLEMENT: Yes, currently today.

3 THE WITNESS: It's the former Apollo Real Estate
4 Group, I think it's A-R-E-A.

5 Q. BY MS. CLEMENT: And how long has the former
6 Apollo Real Estate Group, A-R-E-A, been the largest
7 shareholder?

8 A. Since the merger with Summerville.

9 (Pleadings' Exhibit 462
10 was marked for
 identification.)

11 MR. REID: Thank you.

12 MS. CLEMENT: You're welcome. I just marked as
13 Exhibit 462 from Emeritus' 2012 proxy the cover page
14 and pages 35 through 37.

15 MR. REID: There's two documents here.

16 MS. CLEMENT: Oh, sorry. If you hand that back,
17 I'll get those undone. Thank you.

18 (Discussion held off the record.)

19 Q. BY MS. CLEMENT: So, Mr. Baty, I'm showing you
20 now pages 35 through 37 of the Emeritus 2012 proxy
21 statement regarding beneficial ownership of common
22 stock.

23 To your knowledge, are there any other
24 corporations, partnerships, or other entities that you
25 have an ownership interest in or receive compensation

1 from related to Emeritus that are not listed on
2 pages 36 and 37 of the 2012 proxy statement?

3 A. Would you ask that question again?

4 Q. Yes, certainly.

5 Are there any other corporations, partnerships,
6 or other entities that you have an ownership interest
7 in or receive compensation from that are not listed on
8 pages 36 and 37 of the Emeritus 2012 proxy statement?

9 MR. REID: The question is compound and vague.

10 I think you're asking whether there are other
11 corporations that have ownership that he receives
12 income from, but the way you asked the question is if
13 he has ownerships in other companies, period, that he
14 receives income from.

15 MS. CLEMENT: Your objection is?

16 MR. REID: It's compound and vague, and it's not
17 relevant if he owns interest in companies, other
18 companies unrelated to Emeritus that he earns income
19 from.

20 Q. BY MS. CLEMENT: Are there any other entities
21 that you have an ownership interest in or receive
22 compensation from -- strike that.

23 Are there any other companies in which you have
24 an ownership interest that are not listed on pages 36
25 and 37?

1 MR. REID: The question is irrelevant and
2 invades his privacy in terms of whether he has
3 ownership in companies unrelated to Emeritus. I think
4 it invades his privacy. He's not a defendant. I would
5 instruct him not to answer that question.

6 JUDGE CECIL: Sustained.

7 Q. BY MS. CLEMENT: Are there any other entities in
8 which you have an ownership interest related to --
9 that's a related party to Emeritus that are not listed
10 on pages 36 and 37?

11 A. I don't know what "related party" means.

12 Q. Do you know what a related party transaction is?

13 A. For the definition of this, I don't know what
14 "related party" means. I think you said "related
15 party" to Emeritus, so.

16 Q. Do you have an ownership interest in any
17 related -- parties related to Emeritus that are not
18 listed on pages 36 and 37 of the 2012 proxy statement?

19 MR. REID: It's asked and answered, and vague.

20 THE WITNESS: I don't -- I don't know what
21 "related party" to Emeritus means.

22 Q. BY MS. CLEMENT: Okay. Well, let's just look at
23 pages 36 and 37, and this section of the proxy
24 statement lists the percentage of ownership of shares
25 of Emeritus common stock that exceed five percent,

1 correct?

2 MR. REID: The document speaks for itself.

3 If you know, go ahead.

4 THE WITNESS: I lost the train, so ask me one
5 more time.

6 Q. BY MS. CLEMENT: Are you familiar with proxy
7 statements?

8 A. Yes.

9 Q. Are you familiar with Emeritus' proxy
10 statements?

11 A. Yes.

12 Q. And does this 2012 Emeritus proxy statement list
13 each person or entity which owns more than five percent
14 of Emeritus' common stock?

15 A. Yes.

16 Q. And are you the -- listed at the top at
17 13.7 percent ownership?

18 MR. REID: The document speaks for itself, it's
19 also vague.

20 But go ahead.

21 THE WITNESS: Yes.

22 Q. BY MS. CLEMENT: And then your son, Daniel Baty,
23 has 8.3 percent?

24 MR. REID: The document speaks for itself.

25 Q. BY MS. CLEMENT: Is it true that your son,

1 Daniel Baty, in 2012 owns 8.3 percent per the Emeritus
2 proxy statement?

3 A. I think the way this is done is that BF is the
4 eight percent, and BF is owned by -- 25 percent by
5 Stan; 25 percent by his brother, Brandon; and
6 50 percent by me.

7 Q. So are you saying that the 8.3 percent that the
8 proxy statement indicates that Daniel Baty owns in
9 Emeritus and the 8.4 percent that Brandon Baty owns in
10 Emeritus is consumed in the 8.1 percent that BF Limited
11 Partnership owns in Emeritus?

12 A. I think that's the case.

13 Q. And what are you basing that on?

14 A. That we all together own about 6.2 million
15 shares, which is the 13 percent.

16 Q. And do you have an understanding as to why the
17 other -- that Stan Brandon and BF are all listed out at
18 different numbers, different percentages of greater
19 than eight percent?

20 MR. REID: It's vague and compound, and may lack
21 foundation, call for speculation.

22 THE WITNESS: I think Brandon, in addition to
23 his BF ownership, owns some shares individually, and
24 that's how you get to the 8.4.

25 And that's probably the same true for Stan.

1 Q. BY MS. CLEMENT: So are you saying that the
2 13.7 percent that's listed as your ownership includes
3 the ownership interest of your two sons and the
4 BF Limited Partnership?

5 A. Yes.

6 Q. To your understanding, do any of the other
7 shareholders that are entities besides BF Limited
8 Partnership include the executive officers or
9 directors?

10 A. I have no idea.

11 Q. And what is the business of BF Limited
12 Partnership?

13 A. It's a family partnership that owns various
14 investments that our family has made.

15 Q. Are any of those investments related to
16 Emeritus?

17 MR. REID: Other than reflected on the proxy
18 statement that he talked about?

19 MS. CLEMENT: The proxy statement actually
20 doesn't set forth anything like that.

21 MR. REID: Go ahead, you can answer the
22 question.

23 The question is does BF investments have
24 interest -- own stock in Emeritus; is that what you're
25 asking?

1 MS. CLEMENT: No.

2 MR. REID: Then I lost the question. I
3 apologize.

4 Q. BY MS. CLEMENT: Are any of the BF held family
5 partnership investments related to Emeritus?

6 MR. REID: It's vague.

7 THE WITNESS: When you say -- I have to ask what
8 you mean by "relate" again.

9 Q. BY MS. CLEMENT: Does the BF Limited Partnership
10 conduct business with Emeritus?

11 A. To the best of my knowledge, no.

12 Q. And what is your role at BF Limited Family
13 Partnership?

14 MR. REID: I'll object to the question as
15 irrelevant, beyond the scope of the deposition,
16 invasive of his privacy, and instruct him not to
17 answer.

18 JUDGE CECIL: Objection is overruled.

19 You may answer the question.

20 And by the way, can we just clarify a couple of
21 things. When the deposition started, I believe
22 Ms. Clement said that I was here to rule on objections.
23 I'm actually here to make recommendations to the trial
24 judge, and I assume since this has been preassigned to
25 Judge Hersher, that this transcript and whatever my

1 recommendations are are going to be reviewed by her. I
2 can't imagine the law and motion department looking at
3 this deposition this close to trial.

4 So instead of continuously saying my
5 recommendation is, I'm going to speak as though it's a
6 ruling with the understanding that it's not. It's
7 simply a recommendation.

8 MR. REID: Very good, thank you, your Honor.
9 And actually Judge Hersher did indicate that all future
10 hearings would be in her department.

11 JUDGE CECIL: And, lastly, I'm not going to be
12 commenting unless somebody asks me to with either a
13 look or whatever.

14 MR. REID: Very good.

15 JUDGE CECIL: Thank you.

16 MR. REID: So the recommendation to our trial
17 court is that you should answer the question on what
18 your role is at BF investments, and go ahead and answer
19 the question.

20 THE WITNESS: I'm a general partner and a
21 50 percent owner.

22 Q. BY MS. CLEMENT: And CPG, Columbia Pacific Group,
23 Inc., what is that entity?

24 MR. REID: It's vague, overbroad, it may lack
25 foundation.

1 THE WITNESS: I think it's an entity that -- I
2 don't -- off the top of my head, I don't know what
3 assets are in there, but I think it's minimal.

4 Q. BY MS. CLEMENT: Does Columbia Pacific Group,
5 Inc. conduct business with Emeritus?

6 A. I -- I do not think so.

7 Q. Has Columbia Pacific Group, Inc. conducted
8 business with Emeritus in the past?

9 MR. REID: It's overbroad, may lack foundation.

10 THE WITNESS: To the best of my knowledge, I
11 don't think so.

12 Q. BY MS. CLEMENT: And what's the purpose of
13 Columbia Pacific Group?

14 MR. REID: Asked and answered.

15 THE WITNESS: I think it holds a minor
16 investment -- it gets management fees for supervising
17 some investments. I'm not sure.

18 Q. BY MS. CLEMENT: Are any of the investments that
19 Columbia Pacific Group manages Emeritus properties?

20 A. No.

21 (Plaintiffs' Exhibit 463
22 was marked for
identification.)

23 Q. BY MS. CLEMENT: Okay. We marked as Exhibit 463
24 the Emeritus 2012 proxy statement, pages 37 through 39.

25 The shared opportunity section at the bottom of

1 the page --

2 MR. REID: Which -- oh.

3 MS. CLEMENT: Page 37.

4 MR. REID: Sorry.

5 Q. BY MS. CLEMENT: For the shared opportunity
6 section, what amount of money either in cash or stock
7 did you or entities that you had an interest in receive
8 for each of those last five years starting with 2012
9 from Emeritus?

10 MR. REID: I'm going to object that the question
11 is invasive of his privacy, his personal financial
12 information. He's not a party to this lawsuit. This
13 deposition is not about his personal assets, and it's
14 overbroad. I instruct him not to answer the question.

15 MR. SMITH: Join in the objection.

16 Q. BY MS. CLEMENT: Mr. Baty, is it true that the
17 Emeritus 10-Ks have to disclose all related-party
18 transactions that the company Emeritus has had with you
19 and entities that you control?

20 MR. REID: That's vague and overbroad, it calls
21 for a legal opinion, may lack foundation.

22 Answer the question if you have a basis.

23 THE WITNESS: Could you give me the question
24 again?

25 Q. BY MS. CLEMENT: Is it true that in Emeritus'

1 10-Ks, it has to disclose all related-party
2 transactions that it has had with you and companies
3 that you own?

4 MR. REID: Same objections.

5 THE WITNESS: We comply with whatever the
6 Securities and Exchange Commission regulations are.

7 Q. BY MS. CLEMENT: Okay. And that includes, to
8 your knowledge, disclosing related-party transactions,
9 correct?

10 MR. REID: Lacks foundation, calls for
11 speculation, it's overbroad, it calls for a legal
12 opinion, may call for speculation.

13 THE WITNESS: I -- I don't have specific
14 knowledge of what the regulations are.

15 Q. BY MS. CLEMENT: And your education background,
16 sir, what is that?

17 A. I'm a CPA and an attorney.

18 Q. And where did you go to school?

19 A. In both instances?

20 Q. Yes, sir.

21 A. I went to the University of Washington for
22 accounting. I went to Harvard for law school.

23 Q. And before Emeritus was traded on the New York
24 Stock Exchange, it was traded on the American Stock
25 Exchange, correct?

1 A. Yes.

2 Q. And you were the president and CEO during both
3 of those transitions from a privately-held company to
4 American Stock Exchange, and then when it became on the
5 New York Stock Exchange, correct?

6 A. Yes.

7 Q. And each year you have, up until 2011, signed as
8 the CEO, the 10-Ks, 10-Qs, and proxy statements on
9 behalf of Emeritus, correct?

10 MR. REID: It's overbroad and compound, may lack
11 foundation.

12 Go ahead.

13 THE WITNESS: Yes.

14 Q. BY MS. CLEMENT: And you understood when you were
15 signing these documents that the Securities and
16 Exchange Commission requires that you were making
17 representations to the Securities and Exchange
18 Commission and shareholders, both current and
19 potential, about the business of Emeritus, correct?

20 MR. REID: It's overbroad, and vague, and
21 argumentative, calls for speculation.

22 Go ahead if you can.

23 THE WITNESS: I don't know what you mean by
24 "business" in this context.

25 Q. BY MS. CLEMENT: Okay. You were making

1 representations on behalf of Emeritus in your filings
2 required by the Securities and Exchange Commission that
3 you were purporting to the public to be true?

4 A. Yes.

5 Q. What is the shared-opportunities agreement
6 between yourself and Emeritus?

7 A. It's basically a cash-sharing arrangement
8 whereby Emeritus gets 50 percent of the cash flow, and
9 I get 50 percent of the cash flow, or I have to write a
10 check for any negative cash flow as does Emeritus. So
11 it's a 50/50 sharing in either the benefits, part of
12 the losses.

13 Q. And how broad is the shared-opportunities
14 agreement with Emeritus facility?

15 MR. REID: It's vague. What do you mean? How
16 broad is it?

17 Q. BY MS. CLEMENT: Is it across the board for all
18 Emeritus facilities or is it limited to some?

19 A. I think it applies to about 12. I'm not exactly
20 sure, but that would be close.

21 Q. And why did Emeritus enter into this
22 shared-opportunities agreement with yourself?

23 A. It goes back a number of years, and at that time
24 Emeritus -- I think it was prior to going public, and
25 they had a number of facilities that weren't in a

1 profit position yet, and so I took over the
2 responsibility for those. I basically bought it from
3 them and absorbed the losses for a number of years.

4 Q. And are those approximately 12 facilities still
5 owned by you or are they owned by Emeritus now?

6 A. They're actually owned by a REIT, Healthcare
7 REIT.

8 Q. Is this ownership of the shared opportunities
9 facility a recent transaction by Healthcare -- the
10 Healthcare REIT?

11 A. I think it was five years ago, approximately.

12 Q. Does Emeritus still operate those facilities?

13 A. Yes.

14 Q. And has it been Emeritus' plan to convert from
15 leased properties to ownership of its properties?

16 MR. REID: The question is vague, overbroad,
17 compound, may lack foundation.

18 THE WITNESS: I think the plan was to get a mix
19 of owned and leased.

20 Q. BY MS. CLEMENT: Has it been Emeritus' plan for
21 the last five years or more to convert its leased
22 properties into owned properties?

23 MR. REID: It's overbroad, lacks foundation,
24 calls for speculation, vague.

25 THE WITNESS: I would say those that were -- we

1 were able to convert up until the last couple of years,
2 we were endeavoring to do so.

3 Q. BY MS. CLEMENT: In the community agreements with
4 Baty-related entities section; do you see that on page
5 38?

6 A. Uh-huh.

7 Q. What's this community agreement with
8 Baty-related entities?

9 A. Well, I think it's -- says what it is.

10 Q. Okay. Can you explain for us so the jury can
11 understand what the community agreement with
12 Baty-related entities is?

13 MR. REID: Why don't you go ahead and read what
14 it says, If she has questions, she can ask.

15 MS. CLEMENT: I would ask that you not instruct
16 the witness as though we were in trial, you would not
17 also be able to do that, but limit your comments to
18 legal objections, please.

19 MR. REID: Your question is vague, calls for
20 speculation of what you want the jury to hear him say.
21 He said the document speaks for itself, so I don't
22 understand what you're asking.

23 MS. CLEMENT: Well, that's -- you know, you can
24 limit to legal objections. But instructing the witness
25 on how to answer the question on the record is

1 inappropriate.

2 Q. BY MS. CLEMENT: Mr. Baty, can you tell us in
3 your own words what you understand the community
4 agreement with Baty-related entities is?

5 A. Since I haven't thought about this for a number
6 of years, off the top my head, I couldn't do it. I
7 assume that what is said here is a representation of
8 what the transaction was.

9 Q. Can you please state in your own words what the
10 community agreement with Baty-related entities is as
11 reflected in the 2012 proxy statement?

12 MR. REID: The question is asked and answered.
13 It's harassing.

14 THE WITNESS: I -- I just said that --

15 Q. BY MS. CLEMENT: Well, you're perfectly welcome
16 to take a moment to read it to yourself to refresh your
17 recollection.

18 A. Okay. Thank you.

19 Q. You're welcome.

20 A. Emeritus and I bought eight of the communities
21 that were leased from HC REIT and leased others to them
22 it seems, and for my guaranteeing the leases, which the
23 REIT required, I shared in 50 percent of the cash flow
24 or 50 percent of the negative cash flow. The company
25 was given the right to buy my interests in any of these

1 at six times cash flow, the lesser of six times cash
2 flow for fair market value. The six times cash flow
3 represents a below market formula for purchase.

4 Q. Does the community agreement with Baty-related
5 entities still exist?

6 A. I don't think it does. I think what is in place
7 now is the shared opportunity agreement, but I'm not
8 absolutely sure about that.

9 Q. And the painted post section on that same page,
10 can you tell me in lay terms what is the painted post?

11 A. In the State of New York, a corporate entity is
12 not allowed to own licensed care facilities, and so
13 we -- it has to be an individual. So early on
14 Ray Brandstrom and myself formed this partnership to be
15 the individuals. We received no compensation or
16 benefit from doing that. It's 100 percent pass-through
17 to Emeritus.

18 Q. When you say you receive no compensation for
19 that, you mean you receive no additional compensation,
20 correct?

21 A. That's correct.

22 (Plaintiffs' Exhibit 464
23 was marked for
identification.)

24 Q. BY MS. CLEMENT: Emeritus just announced a sale
25 of its joint venture assets for approximately

1 \$1.8 billion; is that true?

2 A. Yes.

3 Q. And who was that sale made to?

4 A. To -- the sale hasn't closed yet, but it was
5 made to Healthcare Properties out of Los Angeles.

6 Q. Is this the same REIT that you've been
7 referencing throughout your deposition?

8 A. No.

9 Q. And in this sale, can you explain for me what
10 the terms are of this sale of some of Emeritus' joint
11 venture assets?

12 MR. REID: The question is overbroad, vague,
13 compound, irrelevant, may lack foundation, calls for
14 speculation.

15 What are you looking for? I assume this is a
16 pretty complex transaction. Are you looking for a
17 general outline as he understands it?

18 MS. CLEMENT: I'm sure Mr. Baty is very
19 competent to explain the terms of this agreement. I'm
20 not asking him for anything other than what my question
21 suggests.

22 MR. REID: Well, I think it's vague, compound,
23 overbroad, may lack foundation, calls for legal
24 opinions.

25 Go ahead if you have a --

1 Q. BY MS. CLEMENT: Let me lay a foundation.

2 Mr. Baty, were you at all involved in the
3 decision by Emeritus to sell the joint venture assets
4 recently to the Healthcare REIT for approximately
5 \$1.8 billion?

6 A. Yes.

7 Q. Can you tell us why Emeritus chose to sell
8 approximately \$1.8 billion of the joint venture assets?

9 A. Emeritus did not sell \$1.8 million of the joint
10 venture assets.

11 Q. I think I said billion.

12 A. 1.8 billion.

13 Q. Is the Emeritus press release that I've handed
14 you, that we've marked as Exhibit 466 -- 464, excuse
15 me, is the Emeritus press release incorrect?

16 A. I haven't read it, so I can't answer that.

17 Q. Okay. Can you explain to me your understanding
18 of what the terms are of the Emeritus joint -- excuse
19 me.

20 Can you explain to me what you understand the
21 terms are of the Emeritus sale of joint venture assets
22 of \$1.8 billion?

23 MR. REID: It's overbroad, and compound, vague,
24 may lack foundation.

25 Go ahead.

1 THE WITNESS: Well, I just repeat, Emeritus did
2 not sell joint ventures asset of 1.8 million --
3 billion.

4 Q. BY MS. CLEMENT: What is your understanding of
5 what the deal was between Emeritus and Healthcare REIT
6 that was recently announced on the Emeritus website?

7 MR. REID: Same objections.

8 Go ahead.

9 THE WITNESS: 142 assets that Emeritus managed
10 and was principally owned by Blackstone, a private
11 equity company, and those assets were sold to
12 Healthcare Properties for 1.8 billion, which included
13 about nine -- assumption of about 900 in debt --
14 900 million in debt, and equity value of about -- close
15 to 900 million, as well.

16 Q. BY MS. CLEMENT: Was that assumption of
17 approximately \$900 million in debt, was that debt owed
18 by Blackstone or a combination of Blackstone and
19 Emeritus?

20 A. The joint venture.

21 Q. And the joint venture being the joint venture
22 between Blackstone and Emeritus?

23 A. Yes.

24 Q. And that joint venture was formed to purchase
25 the Sunwest properties?

1 A. Yes.

2 Q. And what does that mean, "equity value of
3 approximately 900 million"?

4 A. It -- the total value is 1.8 billion, and there
5 was roughly 900 million in debt, so the difference
6 between the price and the debt assumption is the
7 equity.

8 Q. And how is that paid, or will that be paid?

9 A. In cash.

10 Q. And will that cash payment be to the joint
11 venture of Blackstone and Emeritus?

12 A. Yes.

13 Q. And do you have an understanding of what the
14 split will be between Emeritus and Blackstone of that
15 900 million in cash?

16 A. Emeritus will get approximately 147 million.

17 Q. And where will the rest of the equity of
18 \$900 million go?

19 A. It will go to Blackstone and to an investment
20 entity that our family partnership put together.

21 Q. And what's the name of that investment entity?

22 A. It's a number of letters. It's CPD something.
23 I don't....

24 Q. And 133 of the communities will still be under
25 Emeritus' operation?

1 A. All of them will be.

2 Q. All will be under Emeritus' operation. Nine
3 Emeritus is going to buy back themselves, correct?

4 A. Yes.

5 Q. And those nine buybacks that Emeritus is going
6 to do on its own, that's going to be funded by HCP, the
7 REIT?

8 A. Their financing, yes.

9 Q. And Emeritus will continue to operate all 142,
10 133 of those will be under a triple net agreement with
11 Healthcare Properties?

12 A. Yes.

13 Q. And that agreement is going to give Emeritus
14 five percent off the top of the revenue as its
15 management fee?

16 A. I don't think that's accurate.

17 Q. What's your understanding of what the management
18 fee will be?

19 A. Since it's a triple net lease, the management
20 fee allocation is meaningless.

21 Q. And what's your understanding of what Emeritus'
22 return will be as based upon the triple net lease for
23 operating the 133 buildings?

24 MR. REID: It's overbroad, and vague, and
25 compound, and calls for speculation.

1 THE WITNESS: It's all projected, so it's --
2 it's dependent on how things are operated, and how the
3 economy is, and lots of other things.

4 Q. BY MS. CLEMENT: And what's the projection?

5 A. I don't know the number off the top of my head.

6 Q. What's your best estimate of what the projection
7 is that Emeritus will receive on these triple net
8 leases that it's going to be operating of the 133
9 communities that just went into a transaction with HCP?

10 MR. REID: The question lacks foundation, calls
11 for speculation, it's overbroad.

12 THE WITNESS: I just -- I -- I would be totally
13 speculating. I can't -- don't know the exact number.

14 Q. BY MS. CLEMENT: Were you the person who
15 negotiated this deal on behalf of Emeritus to sell the
16 joint venture assets to HCP?

17 A. I participated, but I -- I was not involved in
18 the preparation of the projections and.

19 Q. But you ultimately felt that it was a good deal
20 for Emeritus?

21 A. Absolutely.

22 MR. REID: We've been going for an hour, I would
23 like to ask for a quick break.

24 MS. CLEMENT: Okay.

25 THE VIDEOGRAPHER: Going off the record, the

1 time is 9:28 a.m.

2 (Break taken in proceedings.)

3 THE VIDEOGRAPHER: We are on the record at
4 9:38 a.m. The date is October 30th, 2012, and we're
5 back on the record.

6 Q. BY MS. CLEMENT: Mr. Baty, when you -- you were
7 one of the founders of Emeritus, correct?

8 A. Yes.

9 Q. And one of the other founders was
10 Mr. Ray Brandstrom?

11 A. Yes.

12 Q. And you had already had a long history in
13 senior care; is that correct?

14 A. Yes.

15 Q. And can you take us through your experience in
16 senior care prior to forming Emeritus in 1993?

17 A. I started with Hillhaven, which was primarily a
18 nursing home company.

19 Q. And what year was that?

20 A. I'm trying to think, probably right
21 around '70, '71, and I was there for approximately
22 17 years.

23 And then I partnered with a gentleman from
24 Salem, Oregon by the name of Bill Colson in Holiday
25 Retirement and was involved with that up until about

1 seven years ago when we sold it.

2 And then my other involvement was with Emeritus.

3 Q. And what's your date of birth?

4 A. 11/4/43.

5 Q. And Holiday Retirement was that Holiday

6 Retirement Corporation?

7 A. Yes.

8 Q. And was that all independent living for seniors?

9 A. Yes.

10 Q. And approximately seven years ago you sold that

11 business?

12 A. Yes.

13 Q. And was Holiday Retirement Corporation, was that

14 a publicly-traded entity?

15 A. No.

16 Q. And when you started at Hillhaven, were you an

17 employee?

18 A. Yes.

19 Q. And what was your job title there when you first

20 started, what were you doing?

21 A. President.

22 Q. Had you had any prior experience in healthcare?

23 A. No.

24 Q. What was your work experience prior to

25 Hillhaven?

1 A. I worked a year for Touche Ross, an accounting
2 firm. And I worked for a law firm for a year. And
3 during both those years, I was a full-time professor at
4 a small college in Tacoma, Washington.

5 Q. Did you have any other work experience,
6 professional work experience before you went to
7 Hillhaven?

8 A. By "professional" you mean?

9 Q. Well, you know, a lot of people work odd jobs
10 while they're in school, but I mean did you have any
11 other full-time jobs?

12 A. No. Actually, when I was in law school, I
13 worked full-time for Price Waterhouse in Boston.

14 Q. Did you do a three-year program at Harvard?

15 A. Yes.

16 Q. Did Hillhaven survive the takeover?

17 A. Yes.

18 Q. Did you ever have an ownership interest in
19 Hillhaven?

20 A. Other than stock options, no.

21 Q. Up until two-and-a-half years ago, were you
22 always the CEO of Emeritus since its inception?

23 A. I believe so.

24 Q. And as part of the merger with Summerville, was
25 part of the plan to groom Granger Cobb to take over

1 Emeritus as its CEO?

2 A. Yes. I wouldn't use the word "groom," but that
3 was the plan.

4 Q. Were the Summerville facilities all over the
5 country like Emeritus or were they concentrated in a
6 certain region?

7 A. They were more relatively in California, but
8 they had them on the east coast and midwest, as well,
9 so pretty well spread out.

10 Q. And did the Summerville merger that occurred in
11 2007, did that increase Emeritus' capacity by
12 approximately 50 percent?

13 MR. REID: That's asked and answered.

14 Go ahead.

15 THE WITNESS: I think I already responded that I
16 don't remember the exact numbers of size between the
17 two companies.

18 Q. BY MS. CLEMENT: Is it your best recollection
19 that adding -- merging with Summerville, Emeritus'
20 capacity increased by approximately 50 percent?

21 MR. REID: It's asked and answered three or four
22 times now. It's harassing.

23 Go ahead.

24 THE WITNESS: Same answer. I don't -- I don't
25 remember the exact number of rooms or facilities

1 relative of Summerville to Emeritus at that point in
2 time.

3 Q. BY MS. CLEMENT: As the CEO of Emeritus, was your
4 principal focus the balance sheet and growth of the
5 company?

6 MR. REID: It's vague and overbroad, vague as to
7 time and scope, it's argumentative.

8 THE WITNESS: Would you explain what you mean by
9 "focus"?

10 Q. BY MS. CLEMENT: Well, was the area in which you
11 principally focused your efforts as the CEO on the
12 balance sheet and growth of the company?

13 MR. REID: It's overbroad as to time and scope.

14 THE WITNESS: I think "principally" is not an
15 appropriate word.

16 Q. BY MS. CLEMENT: So would you say that by the
17 first quarter of 2008, your principal focus as the CEO
18 of Emeritus would be on its balance sheet and growth?

19 MR. REID: It's vague, it's overbroad, it's
20 argumentative as phrased.

21 THE WITNESS: Same answer, that "principal," I
22 don't know what that means in this context.

23 Q. BY MS. CLEMENT: Okay. I'm showing you
24 Exhibit 458.

25 MR. REID: Okay.

1 MS. CLEMENT: I just wanted to handed it to you
2 first, counsel, before I showed it to the witness.

3 MR. REID: Okay.

4 Q. BY MS. CLEMENT: Mr. Baty, are you looking at the
5 Emeritus Corporation first quarter 2008 earnings call
6 transcript?

7 A. Yes.

8 Q. And on this call were yourself, as the cofounder
9 and chairman and co-chief executive officer?

10 A. Yes.

11 Q. As well as Mr. Brandstrom, the cofounder, and
12 Mr. Granger Cobb, co-chief executive officer and
13 president?

14 A. Yes.

15 Q. And then there were a number of what looks like
16 four analysts on the call, as well, correct?

17 MR. REID: The document speaks for itself, calls
18 for speculation.

19 Q. BY MS. CLEMENT: Does the transcript indicate
20 there are four analysts on the call as well on the
21 first page?

22 A. I haven't seen the number four. Do you want me
23 to count them?

24 Q. So, I'm just looking underneath your name there.
25 It says, "Executives," and then, "Analysts," and lists

1 off four analysts.

2 MR. REID: The document speaks for itself.

3 THE WITNESS: Oh.

4 Q. BY MS. CLEMENT: Do you see that?

5 A. Yeah. Now I do, yeah.

6 Q. Okay. Can you tell us in lay terms, what does
7 that mean "analyst"?

8 MR. REID: That's vague and overbroad.

9 Q. BY MS. CLEMENT: Well, in the context of an
10 earnings call transcript when it says analysts who are
11 participating in the call, what does that mean?

12 MR. REID: Same objections.

13 Go ahead.

14 THE WITNESS: That various investment banks have
15 departments that provide analysis on different sectors
16 of public companies, and they follow the company and
17 write reports on them, good, bad, or indifferent.

18 But they, from an investment standpoint, become
19 recognized as experts in particular sectors. And these
20 analysts are specialists in healthcare, and they were
21 listening to the call and being in a position to ask
22 questions on the call.

23 Q. BY MS. CLEMENT: Okay. And do you know some of
24 those analysts yourself personally?

25 A. I've met the first three. I never -- I didn't

1 meet the last one.

2 Q. Oh, Stefan, you didn't know him from Pike Place?

3 A. Not that I remember.

4 Q. Okay. Did you --

5 Was it typical when you participated in the
6 earning calls that you would be the first person to
7 lead off the call with comments as the chairman and
8 co-CEO?

9 MR. REID: It's overbroad.

10 THE WITNESS: Yes.

11 Q. BY MS. CLEMENT: And in this call in May of 2008,
12 did you state that the acquisition of Summerville was a
13 big event in Emeritus' history, increasing Emeritus'
14 capacity by almost 50 percent?

15 A. I did --

16 MR. REID: Excuse me -- wait, wait, wait.

17 The question lacks foundation, calls for
18 speculation.

19 Are you asking him what the document says or for
20 his specific recollection?

21 MS. CLEMENT: I'm asking for a ruling on the
22 objection.

23 JUDGE CECIL: The objection is overruled.

24 You can answer the question.

25 THE WITNESS: And the question again?

1 Q. BY MS. CLEMENT: Yes.

2 Did you state in the May 2008 first quarter
3 earnings call that the Summerville acquisition was a
4 big event in Emeritus' history, increasing Emeritus'
5 capacity by almost 50 percent?

6 A. I did.

7 Q. And did you also state that the area where you
8 principally focus is the balance sheet and growth?

9 MR. REID: Lacks foundation.

10 THE WITNESS: I'm looking -- okay. Yes.

11 Q. BY MS. CLEMENT: And was it the plan, starting at
12 least as early as 2007, for Emeritus to continue to
13 acquire its buildings and taking them from a lease to a
14 purchase?

15 MR. REID: The question is asked and answered.

16 Go ahead.

17 THE WITNESS: I don't know but -- I don't recall
18 the specific time, but our general interest was in
19 owning more, as opposed to leasing more. Change the
20 balance between own and lease.

21 Q. BY MS. CLEMENT: And why is that?

22 A. We thought there was more value in owning at
23 that point in time, and the market was such that we
24 would have the opportunity to do that, and that
25 financing was available.

1 Q. When you say more value in the ownership, what
2 does that mean?

3 A. We think -- we thought that a better balance of
4 owned and leased was appropriate at that point in time.

5 Q. And why?

6 A. In looking at all of the economic factors and
7 availability of reasonably-priced debt, an opportunity
8 to acquire facilities was just appropriate in the
9 business cycle that that seemed like the thing to do.

10 Q. And was one of the reasons for that is that
11 Emeritus could then depreciate the buildings that it
12 owned?

13 MR. REID: That's vague, overbroad,
14 argumentative.

15 Go ahead.

16 MS. CLEMENT: May I have a ruling on that?

17 JUDGE CECIL: The objection is overruled.

18 THE WITNESS: The depreciation is a factor in
19 determining the value or the benefit of an opportunity.

20 Q. BY MS. CLEMENT: And can you tell me in lay terms
21 how the depreciation creates value for Emeritus when it
22 purchases a building?

23 A. The federal income tax laws allow you to
24 depreciate buildings and equipment over varied periods
25 of time. And that depreciation is deductible as an

1 expense, but it's not a cash expense.

2 Q. So, in other words, you get to deduct it as an
3 expense, but you don't have to write a check for it?

4 MR. REID: It's argumentative and misstates his
5 testimony.

6 THE WITNESS: I would say that's accurate.

7 Q. BY MS. CLEMENT: Is it true that in the
8 fourth quarter of 2007, you thought that Emeritus was
9 in the best position financially and operationally
10 since it had been -- since it had been founded in
11 2000 -- excuse me.

12 Is it true that in the fourth quarter of 2007,
13 you felt that Emeritus was in its best position
14 financially and operationally since its founding in
15 1993?

16 MR. REID: It lacks foundation.

17 THE WITNESS: I --

18 MR. REID: If you remember, you can answer the
19 question.

20 THE WITNESS: I don't remember.

21 MS. CLEMENT: Okay. And I would ask for a
22 ruling on instructing the witness when it's not a legal
23 objection. It's not appropriate. You couldn't do that
24 at trial.

25 MR. REID: It lacks foundation.

1 JUDGE CECIL: If we could just limit ourselves
2 to the legal objections, that would be great.

3 Do you have a new question, counsel?

4 MS. CLEMENT: Yes, I do.

5 Q. Is it true that in the fourth quarter of 2007,
6 you felt there was a growing demand for both assisted
7 living and dementia care based upon America's
8 increasing aging population?

9 A. Are you asking me did I say that?

10 Q. Did you say it? Did you think it?

11 A. I thought it. I don't recall whether I said it.

12 Q. And did you believe in 2007 that the wealthier
13 segment of America's population was its seniors?

14 A. Yes.

15 Q. And did you tell investors that, as well, that
16 the wealthiest segment of America's population were its
17 seniors?

18 A. I think -- I don't -- I don't recall
19 specifically what I said, but generally that they're
20 demographics of a growing senior population and
21 relatively they had more wealth on average than the
22 average population.

23 Q. And did you also tell investors in '07 that the
24 seniors who needed assistance with their activities of
25 daily living or suffered from dementia, that those

1 seniors' decisions had to be need-driven, so there was
2 little impact on your business of caring for them?

3 MR. REID: That's vague and overbroad.

4 THE WITNESS: Our business is based on
5 need-driven, as opposed to someone who is just looking
6 for a place to live.

7 Q. BY MS. CLEMENT: And did you let investors know
8 that you thought that because of the need-driven basis
9 of the seniors who were your market, that economic
10 swings were going to have little impact on your
11 business as a result?

12 A. I don't recall the exact words.

13 Q. Does that sound like what you would have said at
14 that time?

15 A. Generally, yes. I don't know the exact words.

16 Q. And is it true that in '07 Emeritus sharply
17 increased its ownership of properties from six percent
18 to 40 percent?

19 A. I don't know the exact numbers.

20 MS. CLEMENT: Exhibit 457.

21 MR. REID: Is there a question?

22 MS. CLEMENT: Well, I just wanted to show that
23 to you, but I plan to show it to the witness once
24 you've had your opportunity.

25 MR. REID: Okay.

1 Q. BY MS. CLEMENT: Mr. Baty, I'm showing you the
2 Emeritus' fourth quarter 2007 earnings call transcript.
3 Were you a participant on that call?
4 A. Yes.
5 Q. And did you tell the analysts on that call that
6 Emeritus was in its best position financially and
7 operationally since its founding in 1993?
8 MR. REID: Could you read the question back?
9 (Reporter read back question.)
10 THE WITNESS: I don't -- I don't recall
11 specifically what I said.
12 MS. CLEMENT: Well, did you take away his
13 transcript?
14 MR. REID: Yes.
15 MS. CLEMENT: Well, would you please give it
16 back to the witness? Thank you.
17 MR. REID: Okay.
18 JUDGE CECIL: Counsel, I don't know how long the
19 transcript is, but perhaps Mr. Baty needs some time to
20 look at it.
21 MS. CLEMENT: Yes, certainly.
22 Q. It's only on the first two paragraphs. It's the
23 bottom of page one and the top of page two. If you
24 want to read that to yourself, please do.
25 A. Okay.

1 Q. Mr. Baty, did you tell the analysts on the fourth
2 quarter 2007 earnings call that Emeritus was in its
3 best position financially and operationally since its
4 founding in 1993?

5 MR. REID: The question is asked and answered,
6 it lacks foundation.

7 THE WITNESS: Yes.

8 Q. BY MS. CLEMENT: And at that time did Emeritus
9 operate 287 facilities with 24,000 units in 37 states?

10 MR. REID: If you recall.

11 THE WITNESS: I don't recall on my own.

12 MS. CLEMENT: Okay. That's why I've given you
13 that transcript, and that's why I'd ask that counsel
14 quit taking it back from him, leave it there.

15 MR. REID: You're not using the document
16 appropriately. You can't -- are you asking him to just
17 read the document? It's hearsay.

18 MS. CLEMENT: No. If you have a legal
19 objection, then you should just limit your comments to
20 that.

21 MR. REID: You just made the comment to me.

22 MS. CLEMENT: You keep taking the exhibit away
23 from him, which he most likely needs to refer to.

24 MR. REID: The document is hearsay. There's
25 ways in which you can use the document with the

1 witness, but it's not appropriate for him to sit here
2 and read it.

3 MS. CLEMENT: I'm not asking him to do that.
4 I've already asked him these questions, and now I'm
5 refreshing his recollection.

6 Would you please hand him back the exhibit?

7 MR. REID: I'm happy to hand him the exhibit.

8 JUDGE CECIL: I'm not sure we've established
9 that his recollection needs to be refreshed. Perhaps
10 we can do that on a question-by-question basis.

11 MS. CLEMENT: Yes.

12 Q. Do you have a recollection of how many facilities
13 Emeritus was operating in the fourth quarter of 2007?

14 A. Not on my own recollection.

15 Q. Okay. Looking at the fourth quarter earnings
16 call and specifically your comments to the analysts,
17 did you indicate that Emeritus operates 287 facilities
18 with 24,000 units in 37 states?

19 MR. REID: Excuse me, the question is hearsay,
20 it's argumentative as phrased.

21 I'd like a ruling.

22 JUDGE CECIL: Sustained.

23 Q. BY MS. CLEMENT: Did Emeritus operate
24 287 facilities in 37 states by the fourth quarter of
25 2007?

1 MR. REID: It's asked and answered, and it lacks
2 foundation.

3 And I'd like a ruling on the objection.

4 JUDGE CECIL: Sustained.

5 Q. BY MS. CLEMENT: Mr. Baty, is it your
6 understanding that in the fourth quarter of 2007
7 Emeritus was operating 287 facilities in 37 states?

8 MR. REID: The question lacks foundation, it's
9 asked and answered.

10 And I would ask for a ruling.

11 JUDGE CECIL: The objection is overruled.

12 If you can answer the question, please do so.

13 THE WITNESS: Do you want to repeat the
14 question?

15 Q. BY MS. CLEMENT: Is it your understanding that in
16 the fourth quarter of 2007 Emeritus operated
17 287 facilities in 37 states?

18 A. I -- apart from the document, I don't recall the
19 number.

20 Q. Would looking at the -- the transcript of your
21 communications with the analysts on the fourth quarter
22 of 2007 earnings call refresh your recollection?

23 A. It doesn't refresh it, but it states what I
24 probably said at that point in time.

25 Q. Do you have any disagreement with what you've

1 stated as reflected in the earnings call transcript for
2 the fourth quarter of 2007?

3 MR. REID: The question as phrased is hearsay
4 and argumentative.

5 THE WITNESS: I have no basis to think that.

6 Q. BY MS. CLEMENT: So you have no basis to agree
7 with what the transcript reflects that you said in
8 2007?

9 MR. REID: It misstates his testimony. It's
10 argumentative.

11 Go ahead.

12 THE WITNESS: I would trust the transcript, but
13 my -- I personally do not recall it.

14 Q. BY MS. CLEMENT: And can you look at the
15 transcript for the fourth quarter of 2007? And looking
16 at your third sentence of your comments, does that
17 refresh your recollection that Emeritus in the fourth
18 quarter of 2007 was operating 287 facilities with
19 24,000 units in 37 states?

20 A. Yes.

21 Q. And what does it mean when you say, "The macro
22 conditions continue to be favorable"?

23 MR. REID: The question as phrased is hearsay
24 and assumes facts not established.

25 THE WITNESS: I'm not --

1 Hang on. I'd like a ruling on that objection.

2 JUDGE CECIL: The objection is overruled.

3 You can answer the question.

4 MR. REID: Go ahead. I apologize.

5 THE WITNESS: I'm not an economist, but when
6 looking at the senior services sector, the demographics
7 were such there was going to be continued growth. I
8 think actually those over 65 and up represented the
9 fastest growing part of the American population,
10 although not the largest part but it was growing at a
11 rapid -- relatively rapid pace. So I think it was more
12 reflective on the demand for senior services as
13 things -- time moved along.

14 Q. BY MS. CLEMENT: In looking at the earnings call
15 transcript for the fourth quarter 2007 on the second
16 page, second paragraph, if you could read that
17 paragraph to yourself.

18 A. The one that begins, "In addition"?

19 Q. Yes, sir.

20 A. I've read it.

21 Q. Does that refresh your recollection that in 2007
22 Emeritus sharply increased its ownership of properties
23 from six percent to 40 percent?

24 A. Yes.

25 Q. And does it also refresh your recollection that

1 Emeritus' plan was to be over 60 percent owned by the
2 end of 2008?

3 A. That was a goal.

4 Q. And was that goal realized?

5 A. I don't know. I don't recall.

6 Q. And when in the past you've used the term,
7 "fee owned property," does that -- did that mean in
8 fee simple, in other words, ownership as opposed to
9 leasing property?

10 A. Yes.

11 Q. And when you've used the phrase in the past,
12 "counter-cyclical business" as it relates to healthcare
13 and senior housing, what does that mean in lay terms,
14 "counter-cyclical business"?

15 MR. REID: Assumes facts not established.

16 THE WITNESS: Generally when the economy is very
17 bullish and growth rate in the broader economy is
18 increasing at relatively higher percentages, the
19 healthcare generally trails that. And when the economy
20 is slower, healthcare generally does relatively better,
21 may not be on an absolute basis, but on a relative
22 basis.

23 Q. BY MS. CLEMENT: And have you compared -- or
24 strike that.

25 Do you compare Emeritus to the healthcare

1 industry?

2 MR. REID: It's overbroad and vague.

3 THE WITNESS: I would say that senior care and
4 services is part of the healthcare industry, yes.

5 Q. BY MS. CLEMENT: So in lay terms a
6 counter-cyclical business would be one that when the
7 rest of the economy is doing well, that business
8 trails, and when the rest of the economy is going
9 slower, that business is going at a better rate?

10 A. I would also say "trails" applies to both
11 directions.

12 Q. Okay. And what do you mean by that?

13 A. I'm just using your word.

14 Q. "Trails"?

15 A. Uh-huh.

16 Q. I actually got the word from you.

17 A. Okay.

18 Q. That's why I'm asking you what do you mean by
19 that?

20 A. Well, you -- if the whole economy is moving up,
21 relative -- historically relatively healthcare will
22 trail that growth. And when the economy is moving
23 down, it won't go down as fast on a relative basis.

24 Q. Okay.

25 A. It doesn't mean absolutely it's good or bad,

1 but.

2 Q. And when the economy is doing poorer, has it
3 been your experience that Emeritus' cost of labor is
4 relatively lower?

5 MR. REID: It's overbroad and vague.

6 THE WITNESS: I would say all costs are
7 relatively lower.

8 Q. BY MS. CLEMENT: And labor being one of those
9 costs?

10 MR. REID: It's overbroad.

11 THE WITNESS: I'd say generally that's true.

12 Q. BY MS. CLEMENT: And is it true that generally
13 that labor at the facility level is Emeritus' biggest
14 expense?

15 A. Yes.

16 Q. And labor is a controllable cost?

17 MR. REID: It's vague, overbroad.

18 THE WITNESS: I think it depends.

19 Q. BY MS. CLEMENT: What do you mean by that?

20 A. Parts of the labor in the facility are variable
21 to the number of people in the facility and the level
22 of care.

23 Q. And what do you base that on?

24 A. I -- I don't know what you mean by "base."

25 Q. What do you base that statement on, that parts

1 of the labor of variable to the number of people in the
2 facility and the level of care?

3 A. Experience.

4 Q. In the last five years, have you had any
5 experience in looking at the actual labor budgets for
6 any of the Emeritus facilities themselves?

7 A. No.

8 Q. Do you know how those labor budgets over the
9 last five years have been created?

10 A. No.

11 Q. Would you say that Emeritus -- the health of
12 Emeritus is -- can be looked at by its occupancy, its
13 rate, and the margin it's achieving in its buildings?

14 MR. REID: It's compound, vague and overbroad.

15 Can I hear the question back, please?

16 (Reporter read back question.)

17 MS. CLEMENT: I'll rephrase the question.

18 Q. Would you say that Emeritus' health could be
19 viewed as looking at its occupancy, rates, the rates
20 it's charging its customers, and the operating margins
21 on each of its buildings?

22 MR. REID: Same objections.

23 Go ahead.

24 THE WITNESS: No.

25 Q. BY MS. CLEMENT: And why do you say no to that

1 question?

2 A. Because the health or quality of the company is
3 based on a lot more factors than measurable financial
4 statistics.

5 Q. When you're talking to the analysts on your
6 earnings call, is that what you're focusing on, the
7 occupancy, the rate, and the operating margins?

8 MR. REID: It's overbroad, calls for
9 speculation, and lacks foundation.

10 THE WITNESS: I would say that the analysts' and
11 the investors' interests probably focuses more on
12 numbers, but I think -- I haven't read these, but the
13 other aspects of the business on the care and the
14 service are probably more important to the health of
15 the company.

16 Q. BY MS. CLEMENT: And who's measuring that aspect
17 of the business, the care and services being provided
18 to the clients?

19 A. We have people that are dedicated operationally,
20 apart from the day-to-day running of facilities, that
21 focus on the care and the quality of that.

22 THE VIDEOGRAPHER: Lesley, I need to change
23 tapes. This ends tape number one of the deposition of
24 Dan Baty. We're going off the record at 10:19 a.m.

25 (Break taken in proceedings.)

1 THE VIDEOGRAPHER: We are on the record at
2 10:29 a.m. The date is October 30th, 2012. This
3 begins tape number two of the deposition of Dan Baty in
4 the case of Boice versus Emeritus.

5 Q. BY MS. CLEMENT: Mr. Baty, by the third quarter
6 of 2008, was Emeritus' occupancy up across the board?

7 A. I have no recollection of that.

8 Q. I'm handing your counsel 459, Emeritus' third
9 quarter earnings call transcript for 2008. Would you
10 take a moment to read -- it's the top of page two of
11 your comments, and there's five short paragraphs.

12 A. And I should read all of them?

13 Q. I would.

14 A. Okay.

15 Q. By the third quarter of 2008, had Emeritus --
16 strike that.

17 By the third quarter of 2008, was Emeritus'
18 average rate up?

19 MR. REID: The question lacks foundation.

20 THE WITNESS: According to this earnings call,
21 yes.

22 Q. BY MS. CLEMENT: And was the occupancy for
23 Emeritus also up?

24 A. According to this document, yes.

25 Q. And was overhead flat at that point?

1 A. According to this document, yes.

2 Q. And so do you believe that this document would
3 reflect what you understood was happening at Emeritus
4 at that time?

5 MR. REID: It's vague and overbroad.

6 MS. CLEMENT: Let me rephrase.

7 Q. Would you typically prepare for these earnings
8 calls with the analysts?

9 A. By "prepare" you mean?

10 Q. Would you do any preparation for these earnings
11 calls as part of your getting on the phone and making
12 representations to the analysts on the phone about the
13 health of Emeritus?

14 MR. REID: It's vague and argumentative.

15 THE WITNESS: I -- I would write what I said.

16 Q. BY MS. CLEMENT: Okay. And what you said would
17 be based upon information that was available to you as
18 the chairman and the CEO of Emeritus, correct?

19 A. Yes.

20 Q. So do you believe that as of the third quarter
21 of 2008, Emeritus' overall average rate was up, its
22 occupancy was up, and its overhead was flat?

23 A. Yes.

24 Q. And "overhead", what does that mean in lay terms
25 as it relates to Emeritus?

1 A. It's generally the costs above the
2 facility-level costs.

3 MR. REID: Keep your hand down so we can hear
4 you and see you.

5 THE WITNESS: Sorry.

6 Q. BY MS. CLEMENT: What would that include?

7 A. It would include -- the overhead?

8 Q. Yes.

9 A. It would include field operational personnel not
10 attached to facilities. It would include the cost of
11 the corporate office in Seattle, which would include
12 labor, IT, professional fees, things like that.

13 Q. Before we took our break, we were talking about
14 measuring of quality of care. And who at corporate is
15 responsible for measuring quality of care?

16 MR. REID: It's overbroad, vague as to time.

17 THE WITNESS: Measuring quality of care is not
18 as specific, a lot of it's subjective, but Budgie Amaro
19 currently is the one responsible for overseeing quality
20 of care.

21 MR. REID: Amparo.

22 THE WITNESS: Amparo, excuse me.

23 Q. BY MS. CLEMENT: And Budgie has been with the
24 company since the Summerville merger in 2007?

25 A. Yes.

1 Q. And is he, to your understanding, the head nurse
2 for Emeritus?

3 A. I don't think he would be defined as the head
4 nurse.

5 Q. He defines himself as that, though.

6 MR. REID: It's argumentative.

7 Q. BY MS. CLEMENT: Have you ever heard Budgie
8 define himself as the head nurse for Emeritus?

9 A. Well, all depend on what purpose you're doing
10 the definition.

11 Q. What's your understanding of what
12 Budgie Amparo's title is at Emeritus?

13 A. He's responsible for -- for quality of service.

14 Q. Is it your understanding that his job title is
15 Executive Vice-President of Quality Services and Risk
16 Management?

17 A. I didn't -- I wasn't aware of the Risk
18 Management.

19 Q. What's your understanding of what that term
20 means, "risk management," as it relates to Emeritus?

21 MR. REID: It lacks foundation.

22 THE WITNESS: That depends. Risk management
23 generally is attached to the insurance functions, so
24 there's different kinds of risks that we're talking
25 about in the operations of the building, the

1 facilities.

2 Q. BY MS. CLEMENT: Do you have an understanding of
3 what Mr. Amparo's role is as it relates to managing
4 risk for Emeritus?

5 A. I think the risk talked about there relates to
6 the quality of service.

7 Q. To your understanding, does quality of service
8 risk include the risk of media exposure to Emeritus?

9 MR. REID: It's vague, overbroad, lacks
10 foundation, calls for speculation.

11 THE WITNESS: No.

12 Q. BY MS. CLEMENT: Is it your understanding that
13 the risk related to quality of services include the
14 risk of residents requesting their records?

15 MR. REID: Same objections.

16 THE WITNESS: I just have no idea how that
17 applies.

18 Q. BY MS. CLEMENT: So to you, risk of quality of
19 services would not include the risk of residents
20 actually requesting a copy of their own records from
21 Emeritus; is that correct?

22 MR. REID: The question is vague.

23 THE WITNESS: I just -- I don't understand what
24 you mean.

25 Q. BY MS. CLEMENT: Okay. So you know residents

1 can -- Emeritus' clients, the residents, can request a
2 copy of their own records from Emeritus. Do you have
3 an understanding of that?

4 A. Yes.

5 Q. Okay. And to your understanding as the chairman
6 and formerly the CEO of Emeritus, is there a risk
7 management function related to residents requesting
8 copies of their own records?

9 MR. REID: Lacks foundation, may call for
10 speculation, overbroad, and incomplete hypothetical.

11 THE WITNESS: I -- I wouldn't attach risk to
12 that, no.

13 Q. BY MS. CLEMENT: And as it relates to quality of
14 services, do you associate a risk management role in
15 the risk of a regulatory oversight into an Emeritus
16 facility?

17 MR. REID: Could I hear the question again?

18 (Reporter read back question.)

19 MR. REID: The question lacks foundation, calls
20 for speculation, it's vague, and incomplete
21 hypothetical.

22 THE WITNESS: I wouldn't attach risk management
23 to that label. I think that observing regulatory
24 requirements and seeing that those are fulfilled or if
25 they need to be -- things need to be changed to bring

1 into compliance, I would say that's part of the
2 responsibility and an important part of what he does.
3 The label "risk" I don't think is relevant.

4 Q. BY MS. CLEMENT: What's your understanding of
5 what that means, a facility that has regulatory
6 exposure?

7 MR. REID: It's an incomplete hypothetical, and
8 overbroad, and calls for speculation.

9 THE WITNESS: I don't know what you mean by
10 "exposure."

11 Q. BY MS. CLEMENT: Do you know what Emeritus means
12 when it writes, "risk of communities with regulatory
13 exposure"?

14 MR. REID: Assumes facts not established, it
15 calls for speculation, lacks foundation.

16 THE WITNESS: I -- I -- I missed the question
17 and how would -- so.

18 Q. BY MS. CLEMENT: That's okay. That's fine.
19 I'll re-ask.

20 Do you have an understanding of what Emeritus
21 means when it writes, "risk of its communities having
22 regulatory exposure"?

23 MR. REID: The question lacks foundation,
24 assumes facts not established, calls for speculation,
25 and is vague.

1 THE WITNESS: I think your -- the use of the
2 word "risk" is probably more of an English issue than
3 anything else, is how it applies to these different
4 things. And I think probably different organizations
5 will describe the responsibilities they have in various
6 ways, and I'm not -- have no knowledge of why "risk"
7 was used in this particular case, one way or the other.

8 Q. BY MS. CLEMENT: From your perspective as the
9 chairman and former CEO, what risk management outcome
10 would be related to the risk of a community having
11 regulatory exposure?

12 MR. REID: The question lacks foundation, calls
13 for speculation, it's overbroad, it's an incomplete
14 hypothetical, it's vague.

15 THE WITNESS: Besides that, I didn't quite
16 understand what you were saying.

17 Q. BY MS. CLEMENT: Sure.

18 As the former CEO and chairman of Emeritus, what
19 is your understanding of what risk management outcome
20 would be related to a Emeritus community having
21 regulatory exposure?

22 MR. REID: The question is vague, it's
23 overbroad, it lacks foundation, it's an incomplete
24 hypothetical, it calls for speculation, it's asked and
25 answered.

1 THE WITNESS: Is that the same question you
2 asked before?

3 Q. BY MS. CLEMENT: No, not exactly. I'm trying to
4 rephrase it.

5 A. I'm -- I'm -- I don't pick up the subtlety of
6 the difference.

7 Q. Okay. Do you have any framework as your -- in
8 your experience at Emeritus as both the chairman and
9 CEO as to why Emeritus would be listing communities
10 with regulatory exposure under its risk management
11 outcomes?

12 MR. REID: Assumes facts not established, it's
13 overbroad, argumentative, incomplete hypothetical,
14 calls for speculation.

15 THE WITNESS: No.

16 Q. BY MS. CLEMENT: How about risks of residents of
17 moving out of Emeritus' facilities, is that something
18 that you, as the chairman and former CEO, that you knew
19 that Emeritus as a whole was tracking residents moving
20 out?

21 MR. REID: The question is compound, and vague,
22 and argumentative.

23 Could you ask that again, please?

24 Q. BY MS. CLEMENT: To your understanding has
25 Emeritus been tracking residents moving out of its

1 facilities for the last five years or more?

2 A. That wasn't the same question.

3 MR. REID: That's okay. She asked a new
4 question.

5 MS. CLEMENT: He asked me to rephrase it, so I
6 did.

7 THE WITNESS: Oh, I didn't hear the rephrase.
8 Yes, Emeritus tracks occupancy.

9 Q. BY MS. CLEMENT: And Emeritus tracks residents
10 moving out, correct?

11 A. Also, tracks -- yes, it does, and then it tracks
12 people moving in, as well.

13 Q. And what's your understanding as to why
14 Emeritus' Quality Services and Risk Management headed
15 by Budgie Amparo would be tracking the number of
16 residents moving out?

17 MR. REID: Lacks foundation, assumes facts not
18 established, it's overbroad, calls for speculation.

19 THE WITNESS: Part of his overall responsibility
20 is to determine whether we have appropriate -- have the
21 ability to take care of people that are in our facility
22 from a standpoint of care and staffing and regulatory
23 issues, as well. So it's I think an important issue in
24 seeing what's happening in terms of people moving out.

25 Q. BY MS. CLEMENT: And what's your understanding of

1 the -- what the phrase "close the back door" means in
2 Emeritus jargon?

3 A. My understanding is that if we can otherwise
4 take care of people or if we can find ways to -- from
5 using outside services to take care of people within
6 the regulatory framework, that we want to do that.

7 Q. And to your understanding is closing the back
8 door something that Emeritus is monitoring on a monthly
9 basis?

10 MR. REID: It's vague.

11 THE WITNESS: The move-out is tracked on a
12 monthly basis.

13 Q. BY MS. CLEMENT: And systems are created by
14 Emeritus to prevent -- try to prevent move-outs, in
15 other words, close the back door?

16 MR. REID: It's compound, vague, argumentative,
17 asked and answered.

18 Q. BY MS. CLEMENT: I'll rephrase the question then.

19 Is it your understanding that Emeritus has
20 developed systems to try to close the back door and
21 prevent residents from moving out?

22 MR. REID: It's argumentative as phrased.

23 Go ahead.

24 THE WITNESS: We have no interest in preventing
25 people from moving out. It's our responsibility to

1 provide a level of service according to the needs of
2 the residents in compliance with the regulatory rules.
3 And to the extent we can take care of the patients, the
4 residents, in fulfilling those responsibilities, then
5 there is no reason why we don't.

6 Q. BY MS. CLEMENT: Was it your understanding that
7 there were systems created at Emeritus to deter
8 residents from moving out as part of the
9 close-the-back-door process?

10 MR. REID: Lacks foundation, assumes facts not
11 established, it's argumentative, overbroad, asked and
12 answered.

13 THE WITNESS: We -- the use of the word "deter",
14 "prevent" is not applicable at all.

15 Q. BY MS. CLEMENT: Okay. Well, in the senior
16 vice-president quality and risk monthly performance
17 reviews that Budgie Amparo is having his divisional
18 nurses, the vice-presidents of Quality Services, submit
19 to him, they state:

20 "New initiative to manage
21 move-outs, if any, have families come
22 into the community for 'training' on
23 how to care for loved ones to deter
24 from moving out."

25 Do you know whose idea this was at Emeritus to

1 deter residents and their families from moving
2 residents out of the facilities by having trainings on
3 how to care for their loved ones?

4 MR. REID: I'm going to object to the question
5 as it assumes facts not in evidence, it's
6 argumentative, it lacks foundation, it's overbroad,
7 it's compound, it calls for speculation.

8 Go ahead.

9 THE WITNESS: I lost track about halfway
10 through.

11 Q. BY MS. CLEMENT: Okay. To your understanding
12 who was responsible for coming up with the system of
13 closing the back door by having a training on how to
14 care for loved ones to deter families from moving
15 their -- the residents out of Emeritus facilities?

16 A. I don't know.

17 MR. REID: Hold on. The question assumes facts
18 not in evidence, it's overbroad, it's argumentative,
19 it's compound and vague.

20 THE WITNESS: I don't know.

21 Q. BY MS. CLEMENT: Would it be appropriate for the
22 Sales and Marketing Department to be involved in a
23 program to close the back door to deter residents from
24 moving out of their facilities if they needed a higher
25 level of care than Emeritus could provide?

1 MR. REID: The question is an incomplete
2 hypothetical, it's argumentative, it assumes facts not
3 established, it's overbroad, it lacks foundation, it
4 calls for speculation, it's compound, vague.

5 THE WITNESS: I don't think any of the words
6 used are -- would be our intent to prevent people from
7 moving out if we can't otherwise take care of them.

8 Q. BY MS. CLEMENT: Do you know who Jayne Sallerson
9 is? J-A-Y-N-E.

10 A. Yes.

11 Q. And who is Ms. Sallerson in the Emeritus
12 Corporation?

13 A. Head of Marketing and Sales.

14 Q. Did you know that it was Jayne's idea to have
15 families come into the community for training on how to
16 care for loved ones to deter them from moving out?

17 MR. REID: The question assumes facts not
18 established, it's argumentative, it's overbroad, it's
19 asked and answered, it's vague.

20 THE WITNESS: No.

21 Q. BY MS. CLEMENT: Do you think that's appropriate
22 for Jayne Sallerson, leader in Sales and Marketing, to
23 be coming up with a plan to close the back door for
24 Emeritus facilities?

25 MR. REID: The question is an incomplete

1 hypothetical, vague, overbroad, argumentative, assumes
2 facts not established, calls for speculation.

3 THE WITNESS: I don't think there is anything
4 wrong at all with marketing people and care people
5 coming together to try to identify how to provide
6 services so people can stay in our facilities.

7 Assisted living facility is looked upon as an
8 extension of home as opposed to a nursing home that's
9 an institution. Most of the residents and families
10 would rather have their families stay there than go to
11 a nursing home.

12 So usually everyone in the community, including
13 the doctor and the family, if they can work together to
14 come up with solutions to allow the patient to stay
15 there, that's generally everyone's goal.

16 Q. BY MS. CLEMENT: As long as the care is being
17 provided, correct?

18 A. As long as the care is being provided.

19 Q. It's your understanding generally that Emeritus
20 is not required to accept any particular resident into
21 its facility, correct?

22 MR. REID: The question is vague and overbroad,
23 may lack foundation.

24 THE WITNESS: Would you say that again?

25 Q. BY MS. CLEMENT: Yes.

1 It's your understanding that Emeritus isn't
2 required to accept any particular resident into their
3 facilities?

4 A. Yes.

5 Q. However, once Emeritus does accept a resident,
6 they are required to meet that resident's needs?

7 MR. REID: It's an incomplete hypothetical,
8 overbroad, lacks foundation.

9 THE WITNESS: The regulatory state by state
10 defines what you can and can't do.

11 Q. BY MS. CLEMENT: Correct.

12 But once you've accepted a resident, you need to
13 meet their needs either by -- with your own staff,
14 bringing in outside services, or transferring the
15 resident somewhere where their needs can be met?

16 MR. REID: The question is compound, it's
17 overbroad, may lack foundation, and calls for
18 speculation, it's an incomplete hypothetical, it's
19 argumentative.

20 THE WITNESS: I think that the term "needs" is a
21 variable, and it depends on the circumstances. There's
22 probably some healthcare needs that can't be serviced
23 at all.

24 Q. BY MS. CLEMENT: Well, is it your understanding
25 that Emeritus is in the business of meeting needs of

1 their residents in either independent activities of
2 daily living, or activities of their daily living, or a
3 combination of both?

4 MR. REID: It's compound and vague and overbroad
5 and incomplete.

6 MS. CLEMENT: I'll rephrase.

7 Q. Is it your understanding that it is Emeritus'
8 business in its assisted living portfolio to meet the
9 needs of their customers, the residents, in a
10 combination of their activities of daily living and
11 independent activities of daily living?

12 MR. REID: It's overbroad, and incomplete, may
13 lack foundation.

14 THE WITNESS: I -- I just have a hard time -- I
15 think it's more broad than that in terms of meeting
16 needs. So it comes back, depends on what the needs are
17 and what -- what people are able to do.

18 Q. BY MS. CLEMENT: When you say, "what people are
19 able to do," who are you referring to?

20 A. I meant the staff at the facility, and outside
21 help, I think of physicians, social workers, rehab
22 therapists. So there's a community of people that are
23 addressing these needs.

24 Q. And to your understanding, who is responsible
25 for facilitating this community of people that can meet

1 the needs of the residents in Emeritus facilities?

2 MR. REID: It's an incomplete hypothetical, and
3 overbroad, it calls for speculation as to the
4 circumstances, may lack foundation, it's vague.

5 THE WITNESS: I come back and say I think
6 depends on what state you're in and what the regulatory
7 environment is, and you have a variety of people
8 addressing the needs of the individual, and to what
9 extent is the family involved and what extent is our
10 facility, the physicians, hospice care, other things.
11 So it's -- it's not just in one element in my opinion.

12 Q. BY MS. CLEMENT: And so has it been -- strike
13 that.

14 Is it true that in addition to growing the
15 occupancy and rate at Emeritus, Emeritus has also been
16 over the last five years growing the level of care that
17 it's providing to residents in its assisted living
18 facilities?

19 MR. REID: Hold on.

20 It's overbroad, and vague, and compound.

21 Go ahead.

22 THE WITNESS: I would say throughout the senior
23 service -- the healthcare field, the acuity level at
24 the various levels of service has been growing. This
25 starts with the hospital, who needs to discharge the

1 patients sooner, who go to the nursing homes so the
2 level of acuity is higher. Nursing home discharges to
3 assisted living moving up the level of acuity.

4 And even if you look at the independent living
5 facilities today as opposed to ten years ago, the
6 amount of people that are receiving some kind of home
7 care is up significantly. So the whole system level of
8 acuity is going up.

9 Q. BY MS. CLEMENT: So has the acuity at Emeritus
10 been increasing -- or strike that.

11 Has the resident acuity at Emeritus been
12 increasing over the last five years?

13 MR. REID: It's overbroad, and compound, and
14 vague.

15 Go ahead.

16 THE WITNESS: I can't statistically respond to
17 that, but my assumption is yes.

18 Q. BY MS. CLEMENT: I'm not asking you for the
19 number, but has it been --

20 Is it your understanding, based upon the reports
21 that you're seeing in your role as the chairman and in
22 the past as the CEO, that acuity in Emeritus' assisted
23 living facilities has been on the rise over the last
24 ten years?

25 MR. REID: I'm going to object to the question

1 that it assumes facts not established, it's overbroad,
2 and vague.

3 Go ahead.

4 THE WITNESS: It's not so much based on any
5 statistics or numbers, but rather just what's happening
6 in the healthcare system generally.

7 Q. BY MS. CLEMENT: And has Emeritus been opposed to
8 federal regulation of assisted living?

9 MR. REID: It's vague and overbroad.

10 THE WITNESS: I don't -- I don't know the
11 mechanics of Emeritus being opposed, but I would say
12 generally the states have regulated the assisted living
13 business.

14 Q. BY MS. CLEMENT: Is it true that Emeritus is
15 taking the position that it is opposed to the
16 imposition of federal regulation of the assisted living
17 industry?

18 MR. REID: It lacks foundation, it's asked and
19 answered.

20 THE WITNESS: I don't -- I don't know
21 specifically what that might mean in terms of opposing
22 regulation, so.

23 Q. BY MS. CLEMENT: Okay. Well, has Emeritus been
24 part of lobbying efforts to prevent federal regulation
25 of the assisted living industry?

1 MR. REID: Lacks foundation.

2 THE WITNESS: I don't think we've been --
3 Emeritus has been directly involved, but individuals
4 contribute to the industry lobbying organization.

5 Q. BY MS. CLEMENT: Are you one of those
6 individuals?

7 A. Yes.

8 Q. And are you opposed to federal regulation of the
9 assisted living facility industry?

10 MR. REID: It's vague and overbroad.

11 THE WITNESS: I think part of that would be --
12 depend on what the regulation was.

13 Q. BY MS. CLEMENT: Would you be opposed to minimum
14 staffing levels for the assisted living industry via
15 federal regulation?

16 MR. REID: Calls for speculation, it lacks
17 foundation, it's overbroad, incomplete hypothetical.

18 THE WITNESS: Generally I would say that minimum
19 staffing levels doesn't relate to the variables in the
20 industry, and it's a simple solution to a more
21 complicated issue.

22 Q. BY MS. CLEMENT: Would you be opposed to minimum
23 staffing levels being implemented via federal
24 regulation to the assisted living industry?

25 MR. REID: It's an incomplete hypothetical, it

1 calls for speculation, it lacks foundation, it's
2 overbroad, it's asked and answered.

3 THE WITNESS: I think until you knew what that
4 specifically meant, it's a little hard to take a broad
5 position.

6 Q. BY MS. CLEMENT: Would you be opposed to the
7 requirement of having licensed nursing staff on duty in
8 the assisted living industry via federal regulation?

9 MR. REID: It's an incomplete hypothetical,
10 calls for speculation as to the circumstances, it's
11 overbroad, lacks foundation.

12 THE WITNESS: It's hard to distinguish my
13 personal philosophy on this and the corporate
14 philosophy, but personally I would -- I would be
15 against federal regulation.

16 Q. BY MS. CLEMENT: Is federal regulation something
17 that, to your understanding, the investors in assisted
18 living industry do not want to see?

19 MR. REID: It's overbroad, it calls for
20 speculation, it lacks foundation, it's vague.

21 THE WITNESS: I have no knowledge of that.

22 Q. BY MS. CLEMENT: Isn't the discussion of whether
23 there will be federal regulations something that's
24 discussed on your road shows that you've attended on
25 behalf of Emeritus and in the earnings call discussions

1 with analysts?

2 MR. REID: It's overbroad, it lacks foundation,
3 it assumes facts not established.

4 THE WITNESS: I haven't been on a road show in
5 years, and I don't recall anything specific in the
6 calls.

7 Q. BY MS. CLEMENT: Is part of Emeritus' program to
8 try to prevent federal regulation of the assisted
9 living industry is to put people at the executive level
10 into the trade and lobby associations like ALFA, the
11 national lobby group for assisted living industry?

12 MR. REID: Lacks foundation, calls for
13 speculation.

14 THE WITNESS: I don't think the sole purpose of
15 ALFA -- it's a trade organization, so its sole purpose
16 isn't to fight federal regulation. It has a lot of
17 positive programs and things they do that are totally
18 unrelated to that and has for a long time.

19 MS. CLEMENT: Move to strike as nonresponsive.

20 JUDGE CECIL: Read back the question.

21 (Reporter read back question.)

22 JUDGE CECIL: And the answer?

23 (Reporter read back answer.)

24 JUDGE CECIL: The objection is overruled.

25 Q. BY MS. CLEMENT: Is one of the reasons why

1 Emeritus is having their executives on the Government
2 Relations Subcommittee of ALFA is to work to prevent
3 federal regulation of the assisted living industry?

4 MR. REID: Lacks foundation, calls for
5 speculation.

6 THE WITNESS: I think the answer is the same,
7 that -- ALFA does has a lot broader scope than this
8 particular subject, and I think having our people
9 participate in the industry organization is positive
10 for the company and positive for the organization.

11 Q. BY MS. CLEMENT: Would you say that the
12 key measures in looking at how Emeritus is doing are
13 occupancy, rate, and margin?

14 MR. REID: That question is asked and answered
15 specifically.

16 THE WITNESS: Those are -- would you read it
17 again?

18 Q. BY MS. CLEMENT: Certainly. Would you agree that
19 the key measures in looking at how Emeritus is doing
20 are occupancy, rate, and margin?

21 MR. REID: Hold on.

22 The question is vague, it's an incomplete
23 hypothetical, calls for speculation, and is asked and
24 answered.

25 Go ahead.

1 THE WITNESS: That depends a lot on who the
2 audience is. If you're talking to the financial
3 analysts, whose job in the long run is to see how the
4 company -- analyze how the company is doing
5 financially, that's -- those are important elements.

6 Internally, they are probably secondary to how
7 the company is being run and how the employees feel
8 about the company and how -- the level of care and
9 service to the residents. So there's a lot of other
10 measures that go into how the company is doing than
11 those three items.

12 Q. BY MS. CLEMENT: Do you discuss items other than
13 occupancy, rate, and margin with the investors?

14 MR. REID: It's overbroad, calls for
15 speculation.

16 THE WITNESS: Are you okay?

17 Q. BY MS. CLEMENT: Yeah, I'm fine.

18 A. Oh, okay.

19 Well, like I said, it depends on who your
20 audience is. Your financial community is looking --
21 focuses more on how the company is doing financially,
22 and these are key items for that.

23 But in terms of how the company does overall,
24 there's a lot of other things that are probably more
25 important.

1 Q. As the chairman and CEO, has your focus been on
2 occupancy, rate, and margin, and acquisitions and
3 mergers?

4 A. Among other --

5 MR. REID: It's overbroad.

6 THE WITNESS: Among other things.

7 Q. BY MS. CLEMENT: Have those been your primary
8 focuses, the financial side, either mergers,
9 acquisitions, occupancy, rate, and margin?

10 MR. REID: It's overbroad.

11 THE WITNESS: Does "primary" relate to time or
12 what's important?

13 Q. BY MS. CLEMENT: Let's say time, what you spend
14 most of your time on.

15 MR. REID: It's vague, overbroad.

16 THE WITNESS: I think that's changed -- not
17 think. I know that's changed since Granger arrived on
18 the scene, and he -- we did the merger primarily
19 because he was respected and noted in the sectors in
20 the senior care as probably one of the best
21 operators -- not probably, he was the best operator.
22 And so he's been totally responsible for that.

23 Historically, I'd say my primary job, if that's
24 what you want to call it, is balancing the interest of
25 the investors, shareholders, employees, and the

1 residents, and trying to create a culture that
2 addresses and balances those three things.

3 Q. BY MS. CLEMENT: Has it been your primary focus
4 to look at the balance sheet and growth of the company
5 as the chairman and CEO since Granger came onboard?

6 MR. REID: It's asked and answered.

7 Go ahead.

8 THE WITNESS: Well, since he was taking
9 responsibility for everything else, that's what I was
10 left with.

11 Q. BY MS. CLEMENT: And prior to Granger, you had
12 people in operations that were primarily responsible
13 for the operations of the facilities, correct?

14 A. Yes.

15 Q. And how many nurses does Emeritus have at the
16 corporate headquarters?

17 MR. REID: It's vague as phrased, may lack
18 foundation.

19 THE WITNESS: I don't know the number.

20 Q. BY MS. CLEMENT: Other than Budgie Amparo, are
21 there any nurses at corporate headquarters that are
22 responsible for quality of services, in other words,
23 the quality of care residents receive?

24 THE WITNESS: Well, if you include the field
25 overhead, there's quite a few.

1 Q. BY MS. CLEMENT: And when you say the "field
2 overhead," do you mean the eight division nurses?

3 A. I think it goes beyond the divisional.
4 Basically I don't know the number.

5 Q. Actually, in corporate headquarters do you have
6 any other nurses that are actually stationed there
7 besides Mr. Amparo that are responsible for the quality
8 of services to the residents?

9 MR. REID: Lacks foundation.

10 THE WITNESS: I'm not familiar with everyone who
11 happens to be a nurse.

12 Q. BY MS. CLEMENT: When you say --

13 MR. REID: Can you give us one second. We're
14 going to pass some water.

15 (Discussion held off the record.)

16 Q. BY MS. CLEMENT: When you say Emeritus' goal is
17 to manage costs, what does that mean?

18 A. Relative to your service level and other
19 expenses, you want to keep your costs reasonable.

20 Q. And that would include -- strike that.

21 Is the biggest part of the cost at the
22 facility level labor?

23 A. Yes.

24 Q. Do you have any relationship --

25 Do you or any of the entities that you own have

1 any relationship with HCP, Inc.?

2 A. None other than the leases that Emeritus has.

3 Q. And currently do you have any responsibilities

4 with respect to quality of care?

5 MR. REID: That's vague.

6 THE WITNESS: I have -- as chairman, I have --

7 no one reports to me, so.

8 Q. BY MS. CLEMENT: As the CEO, did you have any

9 responsibilities with respect to quality of care?

10 MR. REID: It's vague as to time, and overbroad.

11 THE WITNESS: Other than overall corporate, no.

12 Q. BY MS. CLEMENT: What were your job --

13 What were your primary job responsibilities as

14 the CEO of Emeritus?

15 MR. REID: Before he was co-CEO or when he was

16 co-CEO?

17 Q. BY MS. CLEMENT: Okay. Well, let's go up

18 through -- we will break it in half.

19 Did your job duties, responsibilities change

20 once the merger came through with Summerville?

21 A. Not materially.

22 Q. Okay. So as CEO what were your job

23 responsibilities?

24 A. I was responsible -- as a CEO you're responsible

25 for the overall performance of the company.

1 Q. And what were your main goals as the CEO?

2 MR. REID: It's overbroad in terms of time and
3 scope, and vague.

4 THE WITNESS: I -- I define my job, my
5 responsibility as balancing the interests of the
6 shareholders, employees, and the residents.

7 Q. BY MS. CLEMENT: And what were your main goals as
8 the CEO for Emeritus?

9 MR. REID: It's overbroad, vague as to time and
10 scope.

11 THE WITNESS: I think create a culture that was
12 responsive to the business we were in, which is taking
13 care of people, and had employees that enjoyed their
14 job and had a good work environment, and over time
15 provide a reasonable return to the investors.

16 Q. BY MS. CLEMENT: And what --

17 As CEO, what information did you typically
18 review concerning quality of care?

19 MR. REID: That's overbroad.

20 THE WITNESS: I -- basically since Granger was
21 there, I have not been responsible or entirely active
22 in any aspect of the business.

23 Q. BY MS. CLEMENT: And that started in September of
24 2007?

25 A. Yes.

1 Q. So from September 1, 2007, there wasn't -- was
2 there a time period, say through the end of that year,
3 when you were sharing responsibilities with
4 Granger Cobb in helping to assimilate him into the role
5 as the CEO of Emeritus?

6 A. My approach to that relationship and to
7 management generally is that when you hire someone or
8 put someone in a position, and you give them full
9 authority to operate that position.

10 My sense is that I remain co-CEO mainly because
11 of Granger's sensitivity that I started the company and
12 wanted to hang around for a while, I guess, is the best
13 way to put it.

14 But in terms of actually running the business,
15 he ran the business.

16 Q. And that started as of September 1st, 2007?

17 A. The day he walked in.

18 Q. Is that correct?

19 A. Yes.

20 Q. And did you --

21 As the CEO, did you ever attend any meetings
22 regarding quality of care?

23 MR. REID: It's vague.

24 Q. BY MS. CLEMENT: As the CEO, did you ever attend
25 any meetings regarding quality of care?

1 MR. REID: Vague and overbroad.

2 THE WITNESS: I don't specifically remember
3 prior to Granger being there, but in terms of monthly
4 meetings, I'm sure I was involved at different times.

5 Q. BY MS. CLEMENT: Would it be fair to say that
6 primarily your responsibilities have been on the
7 finance side of Emeritus as opposed to the operation
8 side?

9 MR. REID: It's overbroad, it's asked and
10 answered.

11 Go ahead.

12 THE WITNESS: Yes, that's true.

13 Q. BY MS. CLEMENT: Did you have any involvement in
14 hiring Budgie?

15 A. Budgie came with Summerville.

16 Q. So you had no involvement in hiring him; is that
17 true?

18 A. That's true.

19 Q. Have you maintained an office at Emeritus since
20 its -- strike that.

21 Do you maintain an office at Emeritus
22 headquarters?

23 A. I have an office.

24 Q. And have you had an office there at Emeritus
25 headquarters since its founding?

1 A. Yes.

2 Q. And do you receive mail at your office that's
3 addressed to you?

4 A. Yes.

5 Q. And did you receive a letter from an Emeritus
6 nurse by the name of Mary Kasuba in the fall of 2007
7 addressed to you and other members of the executive and
8 team and the board?

9 A. I have no idea.

10 Q. Have you over the course of your tenure with
11 Emeritus, say in the last five years, have you received
12 letters from directors at Emeritus facilities in which
13 they are expressing concern about the quality of care
14 in Emeritus facilities?

15 MR. REID: It's overbroad.

16 THE WITNESS: The way I handle those, if
17 different concerns come in, my assistant passes them on
18 to the appropriate person that's responsible for it.

19 Q. BY MS. CLEMENT: And have you over the past --
20 say since 2007 to the present, have you received
21 letters, e-mails, and other communications directed to
22 you from directors at Emeritus facilities where they
23 have raised concerns about the quality of care the
24 residents are receiving?

25 MR. REID: It's compound, and overbroad, and may

1 lack foundation.

2 THE WITNESS: I don't know that.

3 Q. BY MS. CLEMENT: When you received mail in your
4 office over the past five years, would you typically
5 read the mail and then give -- delegate to your
6 assistant -- or strike that.

7 Would you read the mail and then ask your
8 assistant to delegate the responsibility of responding
9 to particular pieces of mail to other people in the
10 organization if you weren't going to handle it
11 yourself?

12 MR. REID: It's overbroad, incomplete
13 hypothetical, and vague.

14 THE WITNESS: She would read the mail and
15 e-mails. And if it was -- needed something to be
16 followed up by individual departments, then she would
17 give it to that individual.

18 Q. BY MS. CLEMENT: So mail that was directed to you
19 personally you would not read yourself, you would allow
20 your assistant to do that?

21 MR. REID: It's argumentative as phrased, it's
22 overbroad, it's an incomplete hypothetical, it calls
23 for speculation, and it lacks foundation.

24 MS. CLEMENT: May I have a ruling on that?

25 JUDGE CECIL: The objection is overruled.

1 You can answer the question.

2 THE WITNESS: Yes.

3 Q. BY MS. CLEMENT: Would you ask your assistant to
4 summarize for you in any fashion letters that were
5 directed to you that concerned directors raising issues
6 of quality of care in Emeritus facilities?

7 MR. REID: Same objections.

8 THE WITNESS: No.

9 Q. BY MS. CLEMENT: And why not?

10 A. Because we have people that are responsible for
11 particular areas. And if there's complaints, there's a
12 system to follow up on that. And, again, it's back to
13 my approach to how you manage the business. And so we
14 get it to the people that are responsive and have
15 responsibility for that, get it to them rapidly, and
16 they follow up.

17 Q. Have you ever read a letter from a resident care
18 director or nurse -- or strike that.

19 You know the nurse in Emeritus facilities has
20 the name of resident care director; that's their job
21 title?

22 A. Yes.

23 Q. Did you ever learn about a resident care
24 director in Emeritus' Auburn facility in October of
25 2007 writing a letter, which she copied you; Mr. Cobb;

1 Mr. Brandstrom; your COO at the time, Mr. Hutchens;
2 Melanie Werdel; Budgie Amparo; John Cincotta;
3 Martin Raffae; Jim Hanson; and Eric Mendelsohn about the
4 conditions at Emeritus Auburn?

5 MR. REID: The question as phrased is compound
6 and argumentative, it also may invade the
7 attorney/client privilege.

8 Separate and apart from information you've
9 learned from counsel, you can answer the question if
10 you understand it.

11 THE WITNESS: Just give me the first bit again,
12 not listing all of the names.

13 Q. BY MS. CLEMENT: Did you in the fall of 2007 come
14 to learn that there was a letter that had been
15 addressed to you and others at corporate headquarters
16 from the resident care director at the Emerald Hills
17 Emeritus in Auburn, California?

18 A. My best recollection, no.

19 Q. And Emerald Hills, that was an Emeritus legacy
20 facility, correct?

21 A. I don't know what you mean by "legacy."

22 Q. Wasn't that something that's referenced in the
23 call transcripts, the earning calls, and in your 10Ks,
24 and other financial documents, and board meeting
25 minutes, that you refer to Emeritus legacy facilities

1 as facilities that Emeritus owned or operated prior to
2 the Summerville merger?

3 MR. REID: The question is argumentative as
4 phrased, it's overbroad.

5 THE WITNESS: Actually, I don't -- given how
6 you've defined it, I don't know that.

7 Q. BY MS. CLEMENT: Is that how Emeritus defines its
8 legacy facility, if it's an Emeritus legacy facility,
9 it's one that preexisted the Summerville merger?

10 MR. REID: Lacks foundation.

11 Go ahead.

12 THE WITNESS: I don't know that.

13 Q. BY MS. CLEMENT: You've never heard that term
14 before, "legacy", as it relates to Emeritus business?

15 A. I have.

16 Q. Okay. What do you understand that to mean?

17 A. Buildings that it's owned over a period of time.
18 I don't know for that time period that is attached as
19 Summerville merger.

20 Q. So did anyone at Emeritus corporate talk to you
21 about the letter from Mary Kasuba sent on October 12th,
22 2007 in terms of the concerns that she raised regarding
23 huge shortage of staff and other safety issues for the
24 residents at the Emerald Hills facility?

25 MR. REID: It's argumentative as phrased, lacks

1 foundation.

2 Go ahead.

3 THE WITNESS: I don't have any specific recall
4 that someone did.

5 Q. BY MS. CLEMENT: When letters would come to you
6 from -- strike that.

7 Have you ever read the Mary Kasuba letter?

8 A. No.

9 Q. When letters would be addressed to you regarding
10 directors' at the facility level concerns regarding
11 safety issues or quality of care issues for the
12 residents, did anyone at Emeritus corporate give you a
13 summary --

14 THE VIDEOGRAPHER: Hold on, you dropped your
15 mike.

16 Q. BY MS. CLEMENT: When Emeritus directors wrote to
17 you at corporate headquarters, it's your testimony that
18 you would always delegate those letters and responding
19 to those letters to other people at Emeritus; is that
20 true?

21 A. Yes.

22 Q. And would you ask for a summary as to what the
23 resolution was of the concerns raised by the
24 facility-level directors?

25 MR. REID: It's overbroad, and an incomplete

1 hypothetical, calls for speculation as to the
2 circumstances.

3 MS. CLEMENT: May I have a ruling?

4 JUDGE CECIL: The objection is sustained. Vague
5 as to time.

6 Q. BY MS. CLEMENT: As the CEO of Emeritus, and
7 when there were letters addressed to you personally in
8 the years 2007 and 2008 regarding facility-level
9 directors' concerns about resident safety and quality
10 issues, did you -- after delegating the letter to
11 someone else, did you ask for a summary of what the
12 response was of Emeritus to the concerns by the
13 director?

14 MR. REID: The question assumes facts not
15 established, it's overbroad, calls for speculation.

16 Go ahead.

17 THE WITNESS: No.

18 Q. BY MS. CLEMENT: And why not?

19 MR. REID: That's asked and answered.

20 Go ahead.

21 THE WITNESS: We have people in the organization
22 who are responsible for finding out the facts and
23 evaluating the -- whether the issues addressed in the
24 letter are valid and what's going on and --

25 Are you all right?

1 Q. BY MS. CLEMENT: I'm fine.

2 A. Okay, just checking.

3 And, again, my management style is such you
4 delegate to people. You don't second guess, and that's
5 what they're responsible for, and that's what Granger
6 is there for. And so I feel totally comfortable with
7 the quality of people we have doing it and that they
8 will respond appropriately.

9 MR. SMITH: Just as a heads up, you've got five
10 more minutes and the depo is over.

11 MS. CLEMENT: For today.

12 Q. Did you make an assumption that when you
13 delegated concerns that directors had about safety of
14 the residents and quality of care issues, that those
15 concerns would be addressed by someone at Emeritus?

16 MR. REID: The question assumes facts not
17 established that he ever specifically delegated at any
18 time or that he was aware. So it's argumentative as
19 phrased, it's overbroad, and it's incomplete.

20 JUDGE CECIL: Sustained.

21 Q. BY MS. CLEMENT: Mr. Baty, do you know whether
22 you've ever -- strike that.

23 Do you know whether you've ever received at
24 Emeritus headquarters letters from facility-level
25 directors expressing concern about resident safety?

1 MR. REID: It's overbroad and vague as to time.

2 THE WITNESS: If I -- my assistant reads the
3 mail and delivers it to the appropriate person, the
4 answer is no.

5 Q. BY MS. CLEMENT: Do you, as you sit here today,
6 know whether you've actually ever received at Emeritus
7 headquarters mail addressed to you from Emeritus
8 facility-level directors expressing concerns regarding
9 resident safety?

10 MR. REID: It's overbroad as to time, vague,
11 lacks foundation.

12 THE WITNESS: What was the beginning?

13 MS. CLEMENT: I'll rephrase.

14 Q. As the CEO of Emeritus, do you know when you've
15 ever received any letters from facility-level directors
16 expressing concerns regarding resident safety?

17 MR. REID: It's vague, and overbroad in time and
18 scope, lacks foundation.

19 Go ahead.

20 THE WITNESS: The answer to the specific
21 question is no.

22 Q. BY MS. CLEMENT: Did you know if you ever
23 received a letter from a facility director by the name
24 of Dorothy Ting, who was running your Rancho Solano
25 facility?

1 A. No.

2 Q. Do you recall receiving a letter from
3 Dorothy Ting in 2008 in which she directed a letter to
4 you as the executive director of -- strike that.

5 Do you recall receiving a letter from
6 Dorothy Ting, executive director of your Rancho Solano
7 facility, in which she expressed a concern for the
8 residents as shown by your regional and vice-president
9 level staff?

10 MR. REID: The question is argumentative as
11 phrased, it assumes facts not established, it's
12 overbroad, it's asked and answered.

13 Go ahead.

14 THE WITNESS: No.

15 Q. BY MS. CLEMENT: Do you recall speaking with
16 it -- strike that.

17 Do you recall meeting Susan Rotella?

18 A. Yes.

19 Q. And was it your recollection that Susan Rotella
20 was selected to be the vice-president of Operations for
21 California of the West Division in 2009?

22 A. I don't know the date, but yes.

23 Q. Do you recall meeting her?

24 A. Yes.

25 MR. SMITH: It's now 11:30, so the deposition is

1 adjourned.

2 MS. CLEMENT: I'd like to finish asking this
3 question, please.

4 MR. SMITH: You've had three hours to ask him a
5 whole series of questions. We were very clear he had a
6 hard stop at 11:30.

7 MS. CLEMENT: May I ask this one follow-up
8 question before we end?

9 JUDGE CECIL: Depends on how long it is.

10 MS. CLEMENT: Not very long.

11 JUDGE CECIL: One question.

12 Q. BY MS. CLEMENT: Do you recall telling Susan
13 Rotella that she was taking over the shit hole,
14 referencing the West Division of California?

15 A. No.

16 MR. REID: Hold on.

17 The question as phrased is argumentative and
18 assumes facts not established.

19 JUDGE CECIL: He's answered the question.

20 THE WITNESS: No.

21 MR. SMITH: Okay.

22 JUDGE CECIL: Thank you.

23 THE VIDEOGRAPHER: This ends tape number two of
24 the deposition of Dan Baty. We're going off the record
25 at 11:32 p.m.

1 MS. CLEMENT: Make a record that the plaintiffs
2 intend to continue this deposition at the earliest
3 opportunity, so we ask that dates be provided to us.

4 MR. SMITH: We don't intend to provide the
5 witness for further questioning. He's been sitting
6 here for three hours through largely irrelevant
7 questions. He is the chairman of the board of a
8 company. He had no role in specifics involving a
9 particular patient and her treatment over five years
10 ago.

11 You've spent over two hours asking him question
12 about such irrelevancies as what is the definition of a
13 REIT; would you please tell me what depreciation means.
14 You asked him about a lot of publicly-available
15 information, including ownership of properties and
16 number of properties, his employment history, a
17 transaction that took place recently involving the sale
18 of some assets that has nothing to do with a PI claim
19 that took over five years ago.

20 Over the company's objections, Mr. Baty made
21 himself available for deposition. He sat here for
22 three hours. He has no information useful or relevant
23 in your lawsuit. It's very clear to me that your
24 purpose was simply to harass him, inconvenience him,
25 and pry into his personal affairs.

1 And we do not intend to have him return for any
2 additional deposition, absent court order.

3 MS. CLEMENT: Well, we actually do have a court
4 order, which we've marked as an exhibit today as
5 Exhibit 455.

6 There was no request at the hearing or otherwise
7 to limit the scope of the deposition or the time. The
8 plaintiffs never agreed to such a limitation.

9 And we also did a request for production of
10 documents, which we've marked as Exhibit 453, and I
11 understand from Mr. Reid that the witness did not bring
12 any documents with him responsive to the request.

13 Is that true?

14 MR. SMITH: The deposition is over with.

15 MS. CLEMENT: I'm still on the record, sir.

16 MR. SMITH: You were advised in advance of this
17 deposition that if you insisted on proceeding today,
18 the witnesses would make themselves available for
19 three hours each. It's your decision not to proceed on
20 some other date.

21 MS. CLEMENT: I really don't understand the
22 relevance of that.

23 But my question to counsel of record is that
24 there is a document production, and it's my
25 understanding from your comments before we started

1 today that there are no documents that are being
2 produced today. Is that correct?

3 MR. REID: We served your office with objections
4 to the document production request a long time ago. We
5 have not produced any documents here. We've -- we are
6 standing by our objections; however, I told you that
7 many of the documents are not in possession of the
8 witness. That would have been a good use of a portion
9 of the deposition to find out what is in his possession
10 and what's not.

11 The court order, you're correct there is a court
12 order. It very specifically lays out the issues that
13 the court determined were pertinent for this employee
14 of the facility, and it wasn't until the last ten
15 minutes of the deposition that you chose to focus on
16 those things that you told the court that you needed --
17 the reason you needed to take the deposition.

18 So, you know, we certainly can bring the issue
19 in front of the judge and get a determination, but I
20 do -- I do agree with the observations made thus far.

21 MS. CLEMENT: Okay. It's our intention to
22 continue the deposition and to complete it, and we
23 would request dates from you to do that.

24 And we never agreed to the time schedule that
25 you proposed. And not only did you lose the motion,

1 but you lost the writ or the appeal of it, and that's
2 why we're here. And there was no limitation on the
3 scope of this deposition.

4 MR. REID: As the record will reflect, and as
5 you have agreed, you previously indicated that you
6 could do this deposition in one-and-a-half hours. You
7 had previously agreed that you could do the deposition
8 by video conference. We've made him available for
9 three hours. We've made him available to answer all of
10 the issues that you said were necessary, and why the
11 court ordered the chairman of the board of this
12 corporation to sit for deposition. We will have to
13 take it to the judge and allow the judge to decide.

14 MS. CLEMENT: I disagree with the comments and
15 the representations you just made about what I agreed
16 or didn't agree to do.

17 MR. REID: Are you denying that you specifically
18 said you could do both of the depositions in three
19 hours?

20 MS. CLEMENT: I'm disagreeing with your comments
21 and your representation of what was said in the context
22 in which it was said, and when it was said, sir.

23 MR. REID: I want to know if you think that --
24 if you're saying that you never stated that you can
25 complete both of those depositions in a total of three

1 hours, please let me know. If I have that statement by
2 you wrong, I would like to know if that's your
3 position.

4 MS. CLEMENT: Anything else? Or we can finish
5 his deposition if you have the time.

6 MR. REID: Well.

7 MS. CLEMENT: I have the time, and I'm here.

8 THE WITNESS: I had -- the reason that --

9 MR. REID: It's okay. We're fine.

10 Why don't we go off the record?

11 MR. SMITH: Adjourn until one o'clock, and then
12 we'll start with Mr. Cobb.

13 JUDGE CECIL: I assume we can leave things here.

14 MR. SMITH: Okay.

15 (Deposition adjourned at 11:38 p.m.)

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[illegible]

That the foregoing deposition was taken before
me at the time and place herein set forth;

That the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me to the best of my ability and thereafter transcribed into typewriting;

IN WITNESS WHEREOF, I subscribe my name on this
9th day of November, 2012.

Ref No: 12269 CLK

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Ref. No. 12269 CLK

Read by: December 9th, 2012

Note: If you are adding to your testimony, print the exact words you want to add. If you are deleting from your testimony, print the exact words you want to delete. Specify with "Add" or "Delete" and sign below.

[illegible]

Pursuant to Section 2025(q)(1) of the Code of Civil Procedure of the State of California, I hereby certify that I have read my deposition transcript, made those changes and corrections that I deem necessary, and approve the same as now true and correct.

Date: _____ Signature: _____

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November 9th, 2012

Ref. No. 12269 CLK

DANIEL RAY BATY
1145 Harbor Avenue East
Seattle, WA 98102

Re: Boice v. Emeritus
Deposition taken on October 30th, 2012

Dear Mr. Baty:

Your deposition transcript is now available for your signature. You may wish to discuss with your attorney whether he/she requires that it be read, corrected and signed before it is filed.

If you wish to read your transcript, please call our office between the hours of 9:00 a.m. and 4:00 p.m. to schedule an appointment. Your transcript will be available for corrections until December 9th, 2012, at which time the original of your transcript will be forwarded to the noticing party, Ms. Clement.

It is our policy not to release the original transcript from our office.

Respectfully,

CHERYL L. KYLE,
CSR No. 7014

cc: All attorneys present at time of proceeding.

It is not necessary to contact this office if you DO NOT wish to read your transcript.